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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. [redacted]96

RAYMOND S. HALL, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	3
Statement	3
Reasons for Granting the Writ	5
Conclusion	9
Appendix	10

Citations

Cases:

Bartkus v. *Illinois*, 359 U.S. 121, 3 L.Ed.2d 684	2, 5, 7
Beck v. *Ohio*, 379 U.S. 89, 13 L.Ed.2d 142	5
Escobedo v. *Illinois*, 378 U.S. 478, 12 L.Ed.2d 977	5
Griffin v. *California*, — U.S. —, No. 202, Oct. Term, 1964, decided April 28, 1965	5
Hoag v. *New Jersey*, 356 U.S. 464, 2 L.Ed.2d 913	2, 5, 7
Malloy v. *Hogan*, 378 U.S. 1, 12 L.Ed.2d 653	5
Sealfon v. *United States*, 332 U.S. 575, 92 L.Ed. 180	2, 3, 4, 5, 6, 7

Statutes:

18 U.S.C. § 371	3
18 U.S.C. § 372	2, 5
28 U.S.C. § 1254(1)	2

Others:

Perkins, "Cases on Criminal Law and Procedure," (2 Ed., 1959)	7

IN THE

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No.

RAYMOND S. HALL, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Raymond S. Hall prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on March 4, 1965.

Citation to Opinion Below

The opinion of the Circuit Court of Appeals is printed in the Appendix at page 12, infra. (R. 10-22).[1]

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on March 4, 1965. App. 11, infra (R. 24) A petition for rehearing was denied on April 1, 1965, App. 22,

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[1] Where the certified record is numbered as such, it is cited accordingly; however, the transcript of proceedings in the Federal District Court is not so numbered, consequently reference is made to the page numbers of the transcript itself.

infra (R. 142) The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Questions Presented

1. Do the due process of law and double jeopardy clauses of the Fifth Amendment to the Constitution of the United States, require the application of the doctrine of *res judicata* (as defined in *Sealfon* v. *United States*, 332 U.S. 575, 92 L.Ed. 180) to preclude the reintroduction against an accused, in a federal criminal trial, of evidence of wrongdoing which had previously been resolved in favor of the accused by a state court jury?

2. Should this Court re-examine its holdings in *Bartkus* v. *Illinois*, 359 U.S. 121, 3 L.Ed. 2d 684 and *Hoag* v. *New Jersey*, 356 U.S. 464, 2 L.Ed. 2d 913, bearing upon question 1, in light of the vigorous dissents of four present members of this Court in the *Bartkus* Case, and in view of the dissents of three present members of this Court in the *Hoag* Case?

Statement

Petitioner, Raymond S. Hall, was convicted in the United States District Court for the Western District of Virginia, on July 24, 1964, of violating 18 U.S.C. §372.[2] (R. 11) The indictment in the case charged, among other things, that petitioner had conspired with one Dail Thomas Jackson "and with divers, other persons whose names are to the Grand Jurors unknown, to injure the person of Richard E. Artison, (an agent of the Alcohol and Tobacco Tax Division of the Internal Revenue Service) on account of his

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[2] The pertinent provisions of this section are as follows:

"If two or more persons in any State • • • conspire to • • • injure him (an officer of the United States) in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000.00 or imprisoned not more than six years or both".

lawful discharge of the duties of his office and while engaged in the lawful discharge thereof and to impede him in the discharge of his official duties.'"[3]

The district court jury found petitioner guilty and the district judge sentenced him to serve four years in the custody of the Attorney General. On appeal to the United States Court of Appeals for the Fourth Circuit this conviction was affirmed. (R. 24) A petition to that court for rehearing was denied. (R. 142) The petition for rehearing to the United States Court of Appails for the Fourth Circuit, raised for the first time[4] the issues of *res judicata* and double jeopardy, citing as authority therefor the opinion of this Court in *Sealfon* v. *United States*, 332 U.S. 575, 92 L.Ed. 180. The issues raised in the petition for rehearing are the principal issues upon which petitioner seeks review of his conviction by this Court.

Prior to petitioner's indictment and trial in the district court he had been indicted and tried in the Municipal Court of the City of Danville, Virginia, on the charge of accepting a bribe from the same federal officer named in the federal indictment. He was acquitted of that charge by a state court jury (Tr. 71). In the succeeding federal trial the Assistant United States Attorney asserted, in his opening statement, (App. 24-26, infra, Tr. 3-6) that he intended to

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[3] In addition to this conspiracy charge, the indictment contained a second count which charged the petitioner with a conspiracy to remove, conceal, transport and possess nontaxpaid liquor in violation of 18 U.S.C. § 371. A motion by petitioner's trial counsel to sever the two counts for trial was granted on March 20, 1964, and thereafter the Court ordered the defendant to trial on the count quoted above. The other count was left for future setting and trial. To date no action has been taken on this second count. (R. 11.)

[4] Petitioner urged the Circuit Court of Appeals to consider the petition for rehearing on the merits even though the issues raised in the petition had not been raised and preserved in the trial court, on the ground that the failure of petitioner's trial counsel to raise those issues constituted a denial to the petitioner of adequate assistance of counsel, guaranteed to him by the Sixth Amendment to the Constitution of the United States.

prove the very bribe acceptance of which the petitioner had been previously acquitted in the state court. The federal prosecutor thereupon offered in evidence the very testimony which had been resolved in petitioner's favor at his prior trial. There were only four witnesses who testified in the state trial which resulted in petitioner's acquittal on the bribery charge. These same witnesses were required by the United States Attorney to give the same testimony again in petitioner's federal court trial.

It must be assumed that the federal court jury considered and relied upon such testimony although it had been previously rejected by another jury.

For the convenience of the Court, counsel have placed in the Appendix to this petition the pertinent portions of the testimony given at the two trials by the four witnesses involved. These witnesses, and the pages on which their testimony may be found, are listed below.

	District Court	State Court
Richard E. Artison Federal Officer	App. 27-32, Tr. 12-21	App. 33-40, R. 42-53
Quinn Pearl, Special Investigator Alcohol and Tobacco Div. Internal Revenue Service	App. 41-44, Tr. 175-180	App. 45-51, R. 100-111
Eugene C. McCain Danville Chief of Police	App. 52-59, Tr. 42-52	App. 60-66, R. 76-86
Fred Duncan, Sergeant Danville Police Department	App. 67-71, Tr. 71-77	App. 72-81, R. 120-134

In denying petitioner's request for a rehearing, on the merits, the Circuit Court of Appeals rejected petitioner's contentions that he had been subjected to double jeopardy or that the doctrine of *res judicata* stood in the way of petitioner's second conviction. The court attempted to distinguish *Sealfon* v. *United States*, supra, saying as follows:

> "That case involved a second federal trial on a substantive charge after the defendant had been acquitted of a conspiracy to commit the substantive offense charged.

"The circumstances here are that Hall was acquitted by a state court of the charge of taking a bribe. In the trial below for a violation of 18 U.S.C.A. §372, evidence of his having taken a bribe was admitted to show a motive for his alleged conduct. Even if the charges below had involved the same offense or the same act constituting two offenses, one state and one federal, we would feel ourselves bound by *Bartkus* v. *Illinois,* 359 U.S. 121 (1959)."

Reasons for Granting the Writ

Issues of estoppel by judgment in successive criminal trials have sharply divided the members of this Court. See *Hoag* v. *New Jersey,* 356 U.S. 464, 2 L.Ed. 2d 913; *Bartkus* v. *Illinois,* 359 U.S. 121, 3 L.Ed. 2d 684. In the *Bartkus* Case four of the present members of this court dissented vigorously. Three of these four members also dissented in the *Hoag* Case and the fourth member took no part in the consideration or decision of the case.

Petitioner submits that re-examination of the *Hoag* and *Bartkus* cases, *supra,* would now be appropriate and in keeping with the spirit of the following cases recently decided by this Court: *Malloy* v. *Hogan,* 378 U.S. 1, 12 L.Ed. 2d 653; *Escobedo* v. *Illinois,* 378 U.S. 478, 12 L.Ed. 2d 977; and *Beck* v. *Ohio,* 379 U.S. 89, 13 L.Ed. 2d 142; *Griffin* v. *California,* — U.S. —, No. 202, Oct. Term, 1964, decided April 28, 1965.

In the trial of the case at bar the Assistant United States Attorney introduced evidence against the petitioner which had previously been determined in his favor by a state court jury. It is submitted that the mere fact that the first verdict was rendered by a state court jury should not water down the constitutional protection which this court enunciated in *Sealfon* v. *United States,* 332 U.S. 575, 92

L.Ed. 180. There, Mr. Justice Douglas spoke for an unanimous Court as follows:

> "That doctrine (res judicata) applies to Criminal as well as Civil proceedings . . . *and operates to conclude those matters in issue which the verdict determined though the offenses be different.*" 332 U.S. at 578. Emphasis added.

The Bill of Rights of the Constitution of the United States restricts the federal government in its relationship with individuals. The Fifth Amendment to the Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy" and no person shall "be deprived of life, liberty or property, without due process of law." The Fifth Amendment does not distinguish between "former jeopardy" imposed by a state and "former jeopardy" imposed at the hands of the federal government. It prohibits the federal government from prosecuting any person if such prosecution would require that person to be twice put in jeopardy for the same offense. The fact that the indictment on which the second trial is held in a federal court does not charge the same offense as the indictment on which the accused was formerly tried and acquitted in a state court, should not bar the application of the *Sealfon* doctrine; because, if evidence of the first offense is introduced as a foundation upon which to build proof of the second offense, the result is still the result prohibited by both the Fifth Amendment to the Constitution of the United States and the *Sealfon* case, namely, the liberty of the accused is jeopardized twice "for the same offense."

It is submitted that the intendment of the *Sealfon* case was to extend the reasoning and spirit of the Fifth Amendment to issues which had been resolved in a prior court trial, without regard to the sovereign under which that trial was conducted, and to bar the re-introduction of the same evidence submitted at the first trial when used to arrive at

a verdict inconsistent with the verdict of the prior jury on the same issue. Admittedly, the *Sealfon* case dealt with two prosecutions by the federal government; but a person's liberty should not be dependent upon the fine distinction between state and federal prosecutions. Professor Perkins, the noted authority on criminal law, in his widely-recognized work, "Cases on Criminal Law and Procedure" (2 Ed. 1959) at page 839, discusses the doctrine of the *Sealfon* case in relation to *Hoag* v. *New Jersey*, supra. Professor Perkins states that "the position is very sound but the label 'collateral estoppel' is more appropriate, and the present tendency is to employ it for this purpose." Professor Perkins goes on to say:

> "It is to be expected that the doctrine of collateral estoppel will be expanded and will remove much of the confusion which resulted from the effort to make all determinations of this nature in terms of 'former jeopardy" and the 'same offense.' Much of the injustice resulting from the old method may also be removed by the application of collateral estoppel."
> See Perkins *"Cases on Criminal Law and Procedure"* (2 Ed. 1959), Footnote 6, at page 840.

Unless petitioner's petition for certiorari is granted, the ghost of *Bartkus* and *Hoag* will continue to plague the citizens of the United States, and the spirit of the *Sealfon* case will be frustrated.

Due process of law, when used in connection with criminal matters, must be synonymous with fairness if the administration of criminal justice in the United States is to be maintained at its present level of high quality. The United States should not be permitted to test the evidence which it collects against an individual, in a state court for the purpose of ironing out weak points, or to discover favorable means of presentation, and, if unsuccessful, then submit

the finished product to a jury in a federal court during a second trial in which this same evidence plays a vital part.

Unless this petition for certiorari is granted the very sensitive balance of justice will be weighted in favor of the already powerful prosecutor. He will be able to disregard prior acquittals and use, in successive trials, against the same defendant, evidence which one jury has already resolved in favor of that defendant. Unless this petition is granted, persons throughout the United States who allegedly transgress both state and federal laws will be required to defend themselves against allegations of which they have already been acquitted, on as many successive occasions as there are alleged violations of different laws.

An individual who has successfully waged the battle of defending himself against a charge, and who is acquitted of that charge by a jury after a full and complete hearing of all of the evidence relating to that charge, should not be required, a second time, to defend himself against the renewed allegations of the prosecution that he did in fact commit the offense of which he had been previously acquitted.

Under our unique dual system of government, state and federal, it is possible that a given set of facts will give rise to a violation of several criminal statutes, be they state, federal or a combination of both. In such cases, and especially where the state and Federal authorities collaborate in the investigation and prosecution of the accused, it is submitted that the due process of law clause of the Fifth Amendment to the Constitution of the United States requires that the accused, having successfully defended himself once, be not again required to "run the gantlet" merely because the authorities are not satisfied with the prior jury verdict. Once a properly constituted jury determines that the accused did not commit the acts alleged in the indictment, that finding should be conclusive on all

matters where that issue is raised a second time against that accused. Both federal and state sovereigns act under the same Constitution and a finding by one jury should bind both sovereigns on all issues which the verdict determines whether or not those issues involve an identical crime or a different crime.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

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APPENDIX

Table of Contents

	Page
Judgment of the United States Court of Appeals for the Fourth Circuit	11
Opinion of the United States Court of Appeals for the Fourth Circuit	12
Decision of 4th Circuit denying petition for rehearing	22
Excerpts from opening statement of Assistant United States Attorney	24
Testimony of Artison in State and Federal Court	
Federal Court transcript pages 12 to 21	27
Record pages 42 to 53	33
Testimony of Pearl in State and Federal Court	
Federal Court transcript pages 175 to 180	41
Record pages 100 to 111	45
Testimony of McCain in State and Federal Court	
Federal Court transcript pages 42 to 52	52
Record pages 76 to 86	60
Testimony of Duncan in State and Federal Court	
Federal Court transcript pages 71 to 77	67
Record pages 120 to 134	72

APPENDIX

Filed and Entered, March 4, 1965

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 9588

UNITED STATES OF AMERICA, *Appellee*

vs.

RAYMOND S. HALL, *Appellant*

JUDGMENT

Appeal from the United States District Court for the Western District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Western District of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by the court that the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

March 4, 1965

/s/ J. Spencer Bell,
United States Circuit Judge.

Filed March 4, 1965. Maurice S. Dean, Clerk.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 9588

UNITED STATES OF AMERICA, *Appellee*,

versus

RAYMOND S. HALL, *Appellant*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, AT DANVILLE. THOMAS J. MICHIE, DISTRICT JUDGE.

(Argued January 4, 1965. Decided March 4, 1965.)

Before HAYNSWORTH, Chief Judge, J. SPENCER BELL, Circuit Judge, and HUTCHESON, District Judge.

Charles R. Warren, Jr., and B. A. Davis, Jr., for Appellant, and Lawrence C. Musgrove, Special Assistant to the United States Attorney, (Thomas B. Mason, United States Attorney, on brief) for Appellee.

J. SPENCER BELL, Circuit Judge:

The appellant herein, Raymond S. Hall, was convicted in the district court on July 24, 1964, of violating 18 U.S.C.A. § 372.[1] The indictment in that case charged, among other things, the Hall had conspired with one Dail Thomas Jackson

> "and with divers other persons whose names are to the Grand Jurors unknown, to injure the person of

[1] The pertinent provisions of this section read as follows:

> "If two or more persons in any State, Territory, Possession, or District conspire to • • • injure him [an officer of the United States] in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000.00 or imprisoned not more than six years, or both."

> Richard E. Artison [an agent of the Alcohol and Tobacco Tax Division of the Internal Revenue Service] on account of his lawful discharge of the duties of his office and while engaged in the lawful discharge thereof and to impede him in the discharge of his official duties.'"[2]

The district judge sentenced the defendant to serve four years in the custody of the Attorney General, and this appeal followed.

Four issues are raised on this appeal. The defendant charges (1) that there is not sufficient evidence of the conspiracy charged to sustain the jury's verdict of guilty; (2) that the trial court erred in allowing the jury to listen to both a minifon wire recording and a tape copy of the original recording while each juror held in his hand a transcript prepared by Artison, the person who secretly recorded an alleged conversation between him, the defendant, and one Charlie Lee Harris; (3) that error was committed when the district court refused to declare a mistrial after a Government witness referred to alleged efforts by Hall to tamper with the jury in the Corporation Court of Danville, Virginia, which heard and acquitted him of a charge of bribery growing out of the same background incidents involved in the present case; and (4) that the scope of the cross-examination of the defendant allowed by the court below when he took the witness stand to deny his guilt was too broad.

Of course, should we agree with the defendant with respect to assertion (1), he would be entitled to a dismissal of the charges, and a resolution of the other points presented would become unnecessary. We proceed to a discussion of each of the matters assigned by Hall as error.

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[2] In addition to this conspiracy charge, the indictment contained a second count which charged Hall with a conspiracy to remove, conceal, transport, and possess nontaxpaid liquor in violation of 18 U.S.C.A. § 371. A motion by the defendant's counsel to sever the two counts for trial was granted on March 20, 1964, and thereafter the court ordered the defendant to trial on the count quoted above. The other count was left for future setting and trial, and we are advised that no action has thus far been taken with regard to it.

I

The evidence of record warranted submitting this case to the jury, and we think it is entirely adequate to sustain the verdict which the jury returned. There was testimony by one Dail Jackson, all of which was denied by the defendant, that he went to Hall's house [3] at about dark on March 19, 1963, to report to Hall that he had learned that a man they knew as Billy Anderson (the fictitious named used by agent Artison in the Danville area) was in fact a Government undercover agent. Jackson was alarmed by this discovery because he had been delivering to a man he knew as Anderson bootleg whiskey which had been purchased by Charlie Lee Harris, a local illegal whiskey dealer that Jackson discovered was also a paid Government informer. According to Jackson, upon being advised of the true identity of Artison and Harris, Hall instructed him

> "to go see Charlie Lee [Harris] and see if I [Jackson] could sell him some more whiskey and if I could to notify him [Hall] and that *he would take care of it.*" (Emphasis supplied.)

Following this conversation, Jackson reportedly tried to locate both Harris and the undercover agent but was unsuccessful because both of them had suddenly left Danville.

The jury's verdict would seem to indicate that they believed Jackson's story about the alleged noctural visit and discredited Hall's denial. This being true, the jury could reasonably infer from Hall's statement that he would "take care of it" if Jackson could arrange for a sale of whiskey to Artison and Harris and advise him of the pickup place that Hall planned at least to interfere with the discharge by Artison of his official duties by arresting him [4]

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[3] Jackson's reason for contacting Hall is revealed in this statement from his testimony: "Over the years I have got to know him [Hall] real well. He was a police officer and I was breaking the law and I come in contact with him most every day you know." At the time of his arrest, Hall had been a member of the Danville police force for more than fourteen years.

[4] Accepting the Jackson story as true, such an arrest by Hall would have been with knowledge that Artison was a Government undercover agent and not an ordinary participant in the illegal whiskey trade.

and perhaps that he had in mind harming Artison physically. There is authority for the proposition that an agreement to interfere with a Government Officer's performance of his official duties by causing him to be arrested unlawfully is a violation of 18 U.S.C.A. § 372.[5] *Finn* v. *United States*, 219 F. 2d 894 (9 Cir.), *cert. denied*, 349 U.S. 906 (1955). Nor is the result in this case altered in any way by the fact that in spite of the acts of Jackson in furtherance of the conspiracy, the illegal agreement was not accomplished. It has long been settled that the commission of a substantive offense and a conspiracy to commit it are separate and distinct offenses, each of which Congress may make punishable. See, *e.g.*, *Pinkerton* v. *United States*, 328 U.S. 640, 643 (1946).

II

A key item of evidence introduced at Hall's trial was a secret mechanical recording plus a tape copy and transcript of an alleged conversation between Artison, Harris, and the defendant early on the morning of March 18, 1963, in a police car then being operated by Hall. It was during this conversation that Hall allegedly took a $50.00 bribe from Artison.[6] The conversation was originally recorded on minifon wire, but because this wire was extremely fragile, a tape copy of the original recording was immediately made. From this tape copy, agent Artison prepared a transcript of the conversation in which he identified the various speakers. A copy of this transcript was given to each juror when the mechanical recordings were played at the trial. Although they did not attempt to show that there was any conflict between the original minifon wire and the tape copy, counsel for the defendant refused to stipulate that the tape was a true copy of the original recording. Since it wanted the jury to have a transcript of the conversation and since the transcript Artison prepared was from the tape copy, the Government asked for and received, over the defendant's objection, permission from

[5] Jackson testified that after learning of their true identity, he wanted Harris and Artison "caught" and that he sought Hall's assistance to see that this was done. He also indicated that he understood that if he followed Hall's instructions, "he [Hall] would be there to catch them."

[6] Hall denied having ever taken a bribe from Artison or anyone else.

the court to play both the minifon wire and the tape copy while the jurors followed the conversation with their transcripts.

The defendant does not appear to challenge the playing of the original wire recording to the jury. He contends, however, that the subsequent playing of the tape copy was improper and that the court should not have permitted the jury to receive the written transcript of the conversation prepared by agent Artison. Two objections are interposed by the defendant to the playing of the tape copy: (1) that allowing the jury to hear both the original recording and the copy placed unwarranted emphasis upon this evidence, and (2) that the inaudible segments of this tape were so substantial that the exclusion of the entire tape as untrustworthy was required. We do not think the rulings of the district judge on either point amounted to an abuse of his discretion. Regarding point (1), we also observe that the asserted prejudice about which the defendant now complains resulted primarily from the conduct of his own counsel.[7] As to point (2), we note that while perhaps as much as twenty-five per cent of the conversation between the parties was inaudible, all that portion of the discussion relating to the offer and acceptance of the alleged bribe was clear and audible. *Cf. Addision* v. *United States*, 317 F.2d 808, 815 (5 Cir. 1963), *cert. denied*, 376 U.S. 905 (1964) (recording approximately one-half of which was inaudible held properly admitted in evidence).

Nor do we think the district court handled the transcript

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[7] It appears that both the original recording and the tape copy were played in chambers in the presence of the judge, counsel for the Government, and counsel for the defendant. At the same time the transcript prepared by agent Artison was compared with the recording from which it was made. There was never an objection that the transcript was inaccurate, and, as previously pointed out, counsel for the defendant did not attempt to show that there was any conflict between the original recording and the tape copy. However, defense counsel refused to stipulate that the tape copy was a true copy of the original recording, even though by doing so, they could have eliminated the playing of the tape copy. In the absence of a stipulation by Hall's attorneys, the court permitted the jury to hear both the original recording and the tape copy so that they could make their own determination about the accuracy of the copy.

incorrectly. The transcript served to assist the jury in following the conversation by identifying the various speakers; had it not been for this device, it would have been necessary for Artison to constantly interrupt the playing of the tape to indicate which of the parties had made a particular statement. This would seem to us to be a matter clearly within the province of the trial judge's discretion. The defendant maintains, however, that by allowing the transcript to be used, Artison was corroborating his own previous statement by giving his translation of the recording. Our answer to this contention is that we think this transcript had a corroborative effect similar to that which any photograph, drawing, or mechanical model has when used by a witness to amplify his testimony. *Cf. People* v. *Feld,* 305 N.Y. 322, 113 N.E.2d 440, 444 (1953). Cross-examination is always available to a party to show that the transcript or picture or model does not accurately represent the witness' version of the facts in issue. The only case cited by the defendant in which transcribed material was excluded is *United States* v. *Schanerman,* 150 F.2d 941 (3 Cir. 1945). That case involved transcribed notes prepared by a stenotype operator from hearing the mechanical recordings repeatedly played, a situation factually distinguishable from the instant case. Furthermore, the court there did not indicate why it was proper to exclude the transcribed notes. For these two reasons, then, we decline to regard the *Schanerman* decision as controlling authority.

We hold that the trial judge's rulings pertaining to the mechanical recordings of the conversation and the transcript prepared by Artison were proper.

III

During the direct examination of Dail Jackson, who had been called by the Government, he testified that prior to the defendant's state court trial for and acquittal of a charge of bribery, Hall had contacted him and asked him if he knew any of the people whose names were on the state court jury list. Jackson said that he told Hall that he did not know any of the prospective jurors. In response

to an inquiry as to whether Hall asked him for anything else and over an objection by the defendant, Jackson also stated:

> "Well they [Hall and others] were trying to get to the jury and wanted to know if I could help them but I don't know that they ever did and I didn't help them . . . I never did anything."

This line of questioning prompted Hall's counsel to ask that the jury be excused until after a discussion about the propriety of any further reference to events which preceded the state court trial. During this discussion, Hall's counsel moved for a mistrial. After hearing the arguments of counsel, the district judge denied the motion for a mistrial and ruled that what had transpired prior to Hall's state court bribery trial was not a proper part of the case in the federal court. After allowing the district attorney to complete his examination of Jackson on this point for the record on appeal, the judge recalled the jury and instructed them that they were to disregard any suggestion of jury tampering in the prior proceeding and to restrict their consideration solely to the charge of conspiracy.

We find no error in the district judge's handling of this aspect of the trial. Jackson's testimony in the presence of the jury was stopped before he had an opportunity to state what else Hall had done prior to the bribery trial other than to inquire about his knowledge of prospective jurors.[8] The district attorney argues with some cogency that testimony about the alleged jury tampering in the state proceeding was proper because the defendant had opened up this subject by bringing out on two occasions before Jackson took the stand that there had already been a trial for bribery at which the defendant was acquitted in a very short time. Whether or not the court's ruling on the "opening up" point was correct, we do not think that

[8] In testifying for the record on appeal, Jackson said that Hall had asked him for money to pay off two of the jurors at the state court trial with the understanding that if he helped Hall with the state court jury, Hall would help him get to a juror (Bobby Otison) in Jackson's trial in the federal court for possessing and transporting nontaxpaid whiskey.

Jackson's references to possible jury tampering in the earlier proceeding, when considered in conjunction with the cautionary instructions given by the district judge, so prejudiced the jury against Hall that the declaration of a mistrial was required.

IV

It is settled law that the scope of cross-examination is generally a matter within the sound discretion of the trial judge, *Chinn* v. *United States*, 228 F. 2d 151, 154 (4 Cir. 1955), and appellate courts are reluctant to set aside lower court judgments upon an assertion that the examination of a witness (even though that witness be the defendant) was permitted to range too far afield. Even so, there is no dispute that there are some limits to what a witness may be questioned about on cross-examination. One of these limits is the well recognized rule that the prosecution in a criminal proceeding may not seek to establish, either by cross-examination of the defendant himself or by the independent testimony of other witnesses, that it is likely that the accused is guilty of the offense with which he is presently charged because he has committed prior criminal acts. *Michelson* v. *United States*, 335 U.S. 469, 475 (1948); 20 Am. Jur. Evidence § 309 (1939); see also Note, 78 Harv. L. Rev. 426, 435-43, 449-51 (1964). However, the rule excluding evidence of prior collateral criminal offenses is subject to several important exceptions, one of which is that prior offenses are admissible to show a motive inducing the commission of the crime for which the defendant is presently being prosecuted. 20 Am. Jur. *supra* at § 313; 1 Wigmore, Evidence §§215-16 (3d ed. 1940).

The present defendant complains that the limits upon proper cross-examination were not respected at his trial when the court, over proper objection, allowed the district attorney to question him about having accepted "protection" money from certain designated people on occasions in the past. Hall maintains that this line of questioning permitted the Government, contrary to a settled rule of evidence in criminal cases, to place his character in issue at a time when he had not yet raised the question of his good character. The Government argues that the inquiry about

other illegal acts was a proper one because the receipt of "protection" money in the past would establish a motive for Hall to desire to "take care of" anyone whose activities might threaten the termination of this source of income.

On direct examination Hall was asked whether he at any time had accepted any money from either Harris or Artison; he denied ever having done so. He also denied that it was his voice on the minifon wire and the tape copy which were played for the jury and which included an alleged statement by him that "you know yourself, Charlie [Harris], I've never fooled with any of you fellows, you know that." On cross-examination Hall was asked, over objection by his counsel, whether he had ever taken a bribe from any bootlegger or gambler; he replied, "I have never received, accepted or taken money from anyone in my life as a bribe." He then denied ever having borrowed or accepted money from certain specific people. In rebuttal the Government put on several of these people as witnesses, and they testified that for some time prior to the activities involved in this case, they had been paying Hall money to forestall police interference with their illegal ventures.

After a review of the transcript, the pertinent authorities, and the arguments of counsel both in their briefs and before us personally on this point, we think the Government was entitled to question Hall and to put on evidence pertaining to prior bribes he allegedly had received for the purpose of showing a possible motive for him to enter into a conspiracy to injure Artison or interfere with the discharge of his official duties. *Cf. United States* v. *Puff*, 211 F.2d 171, 175 (2 Cir.), *cert. denied*, 347 U.S. 963 (1954); *Thompson* v. *United States*, 144 Fed. 14, 18-19 (1 Cir. 1906); *State* v. *Pittman*, 134 S.E. 514, 520-21 (S.C. 1926). That the evidence of prior collateral offenses which was properly received on the question of motive might also have tended to cause the jury to wonder about the defendant's general character did not entitle him to have that evidence excluded, despite the fact that at the time this evidence was received the defendant had not placed the status of his character in issue. *Cf. United States* v. *Glory Blouse & Sportswear Co.*, 158 F.2d 880, 881-82 (2 Cir.

1947); *United States* v. *Pugliese*, 153 F. 2d 497, 499 (2 Cir. 1945). There was no error on the part of the trial judge in his rulings on this question.[9]

V

Having carefully considered each of the defendant's allegations of error and having upheld the ruling of the trial judge on each point, we affirm the judgment of the district court.

Affirmed.

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[9] Our decision on this point buttressed by the following statements prepared by defendant's attorneys and included in Judge Michie's charge to the jury:

> "No amount of testimony pertaining to the defendant dealing in non-taxpaid whiskey, and no amount of testimony pertaining to the defendant accepting bribes from any whiskey dealer, as offered in this case, would by itself justify you in convicting the defendant. The testimony with reference to the defendant dealing in non-taxpaid whiskey, and the testimony with reference to the defendant accepting bribes from various whiskey dealers is admitted in this case for the purpose of showing you the background that existed according to the Government's contention and further for you to consider as to whether it might or might not have furnished the defendant a motive and reason for entering into the conspiracy as alleged in the indictment."

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 9588

UNITED STATES OF AMERICA, *Appellee,*

versus

RAYMOND S. HALL, *Appellant.*

ORDER DENYING PETITION FOR REHEARING

The defendant-appellant, Hall, by newly retained counsel, has petitioned for a rehearing of his case under rule 30(4) of this court.

Hall's petition alleges that he has been subjected to double jeopardy.

We have considered the petitioner's contentions. We think this case is clearly distinguishable from *Sealfon* v. *United States*, 332 U.S. 579 (1948), the principal case upon which the petitioner relies. That case involved a second federal trial on a substantive charge after the defendant had been acquitted of a conspiracy to commit the substantive offense charged.

The circumstances here are that Hall was acquitted by a state court of the charge of taking a bribe. In the trial below for violation of 18 U.S.C. 372, evidence of his having taken a bribe was admitted to show a motive for his alleged conduct. Even if the charges below had involved the same offense or the same act constituting two offenses, one state and one federal, we would feel ourselves bound by *Bartkus* v. *Illinois*, 359 U.S. 121 (1959). The petition is therefore denied.

CLEMENT F. HAYNSWORTH, JR.,
Chief Judge, Fourth Circuit.

J. SPENCER BELL,
United States Circuit Judge.

STERLING HUTCHESON,
United States District Judge.

—, 1965.

Filed April 1, 1965, Maurice S. Dean, Clerk.
A true copy, Teste:

MAURICE S. DEAN,
Clerk, U.S. Court of Appeals for the Fourth Circuit.

By MARGARET L. DAVIS,
Deputy Clerk.

Excerpt From Opening Statement of Assistant United States Attorney

[Tr. 3] It came to his attention that Raymond Hall was this officer and so through inquiry by his informer Charlie Lee Harris they decided to attempt to give Hall an opportunity to accept a bribe for them to bring in illegal whiskey. In order to set this up and to bolster their own image in the underworld of the Danville area they decided that they would be caught by other police officers and federal agents with a load of whiskey and would be bonded on that charge and after that they would approach Raymond Hall and get him to accept a bribe to allow them to bring in whiskey. Of course the undercover agent was posing as a bootlegger. On March 16th which was a Saturday I believe they had an order for illegal whiskey from someone who actually thought they were bootleggers and they arranged with certain Danville police officers and Alcohol & Tobacco Tax Agents to catch them as they delivered this load. This was done, the purpose being to promote their well being with the bootleggers. The following day, March 17th was a Sunday. Charlie Lee Harris and Richard Artison, also known as Billy Anderson, undertook to contact Raymond Hall to talk to him about their case and Billy Anderson wanted protection to keep from being caught like on the previous day. They went to Hall's home Sunday night. They talked to Hall [4] there and he made the arrangement for them to meet him at the veneer plant right off Route 29 South and there they would transact their business somewhere between one and two o'clock actually on a Monday morning. Charlie Lee Harris went on home and he dropped off Artison, the undercover agent, first where he was staying and arrangements were made for Charlie Lee to pick Artison up later. Artison had contacted the superior in this area who was a special agent with the Alcohol & Tobacco Tax Division, Quinn Pearl and told him what he was going to do. In turn the Chief of Police McCain was notified and he and Sgt. Duncan of the Danville Police Department and Quinn Pearl who was the supervisor of the undercover agent all went out to the veneer plant to witness this transaction and the undercover

agent was furnished with a miniphone. A miniphone is a small recording device which is strapped to the body and the microphone can be hidden in a pocket and it is able to record a conversation: He wanted to record the conversation when it took place. The meeting was suppose to take place around two o'clock. Artison got dressed and was waiting for Harris to appear and when he didn't he started to get ready for bed. In the meantime Harris did come and they decided to go on even though it was past the time. They went on up to the veneer plant and see if Hall was still in the area. They did so and they noticed a car dropping in behind them and blinked it's lights several times so they stopped. It was Hall. They went on down to the veneer plant where Quinn Pearl, Sgt. [5] Duncan and Chief McCain could see them. There they discussed the arrest on the previous day and Hall wanted them to take him out and show him where they had been caught. Charlie Lee got in the front seat and Artison got in the back seat. Charlie Lee who had known Raymond Hall all of his life got in the front seat. They proceeded to show him where they had been caught on the previous night and they went on back to the veneer plant where Hall promised that he wouldn't do anything to hurt them, he couldn't promise them that they wouldn't get caught by other officers but if they wanted to bring in some liquor to call him at home and let him know when they were coming in and what route they were going to deliver and he would do what he could to help them. They told him they were planning on bringing in a load of liquor the next night. Hall told them he would be off for the next four days because he was going to Richmond. He told them he wasn't going to rob them but he thought it was worth something and the undercover agent asked him if $50.00 would be sufficient and he said, "Yes, that is enough for now." So they gave him the $50.00 —gave Hall the $50.00 and Hall cautioned them never to write his phone number down or underline it in the phone book and to call him from a pay phone and told them if they called and he talked in circles not to say anything— they would know something was wrong and he couldn't talk. He went on to comment that he had some information that an undercover agent was working in the area, that

there was a colored [6] undercover agent working in the area and asked them if they knew anything about it. This took place somewhere between 2:15 to 2:45 in the morning. They went out after the meeting to a pay phone and called Quinn Pearl and met him over the North Carolina line and delivered to him the miniphone with the conversation.

Federal Court Testimony.

Richard Artison, Direct:

[Tr. 12] Q. When did you first come into contact with Charlie Lee Harris?

A. I met him on the 14th also. I was just here for that one day. I had been in Virginia and working undercover since the 11th of January and I was getting a little break. I went back for a few days after I met him. Then I came back again [fol. 13] and worked with him on the 25th.

Q. The 25th of February?

A. Yes sir.

Q. And did you work with him continuously after that until the middle of March?

A. Yes sir.

Q. In what way did Charlie Lee Harris assist you?

A. He was more familiar with the people who were selling this liquor and he would introduce me to the people or go with me or tell me where they were and I would make a purchase.

Q. Now coming to the middle of March, particularly March 16, 1963 do you recall the events of that day?

A. Yes sir.

Q. What day of the week was that?

A. I believe that was a Saturday.

Q. Would you tell the Court and jury what, if anything, took place that day?

A. I think what took place that day actually started late the night before, around 11:30 on the night of the 15th Charlie Lee Harris and I arranged to be arrested across the street from his residence, a place on Maxine Drive or Maxine Road Palm Street. We were arrested by Sgt. Duncan of the Danville Police Department and investigators Tolley and Jesse, the alcohol tax unit here in Danville. The purpose of being arrested was at that time I was having a little trouble making buys, purchases [14] because I had been to so many people in the area and we thought that perhaps the people were a little suspicious of me and that this arrest or an arrest would help so I received an order of about two cases, twelve

gallons to go to Jimmy Mitchell. He came by my place and he thought I was in the business and asked me to deliver two cases to him about 11:30 that night which I agreed to do. We used this situation as a background for our arrest and we were chased. They turned on the siren and everything and they chased us for a short distance and we were caught. We were caught in Jimmy Mitchell,s back yard so they would be able to see that we had been arrested.

Q. And did you have the whiskey in your possession at that time?

A. Yes we had some whiskey. It had been watered down quite a bit because we weren't able to come up with quite enough but it was originally whiskey.

Q. Will you go on to the next day, I believe it would be Sunday, March 17th and tell the Court and jury please what took place specifically with reference to Sgt. Raymond Hall?

A. Sunday afternoon, I don't recall the exact time, I met Special investigator Pearl on the edge of town. I think it was north of town and he gave me a miniphone tape recorder which I could conceal under the jacket that I was wearing and he showed me how to use it. Nothing happened then until later that night. We were trying to find the residence of Sgt. Hall [15]—where we thought he was living. We were going to discuss the arrest and all and that was I guess around 10:30 or 10:45 at night.

Q. Did you make contact with Sgt. Hall?

A. Yes. I didn't not that night. Charlie Harris did. We were in the same car but I didn't talk with him that night.

Q. Did you see Sgt. Hall that night?

A. I saw a person I thought was Sgt. Hall. I wasn't actually able to get close enough without getting out of the car to see him.

Q. And where did this take place?

A. This was at a residence on Northmont Drive. Northmont, I don't know about the Drive.

Q. As a result of that meeting what took place after that?

A. When Charlie got back in the car he told me that——

Mr. Davis: I object to what he told him.

Q. Don't tell what he told you—go ahead and you can tell what you did as a result of that or what arrangements were made?

A. After that we left this residence and drove a short distance away, around a couple of blocks and I went to a phone and I called Quinn Pearl and told him we were suppose to——

Mr. Davis: We are going to object to that if your Honor please.

[16] The Court: What he told somebody else.

Mr. Davis: Hearsay.

Mr. Musgrove: It's not hearsay. He is telling what he said.

Mr. Davis: To somebody outside.

The Court: Objection over ruled.

Mr. Davis: Exception.

Q. Go ahead Mr. Artison.

A. I called Quinn Pearl on the telephone and told him that we were supposed to meet Raymond Hall later that night—earlier in the morning and Quinn told me when to call him back.

Q. Were arrangements made between you and the informer Charlie Lee Harris?

A. Yes Charlie was to pick me up about 12:30 in the morning. He was supposed to come by and pick me up. He took the car and went home.

Q. Where were you when he took the car and went home?

A. He left me off at the place where I was staying on Ross Street.

Q. What did you do then?

A. I went in. I was tired and I went to sleep. I sat my alarm clock for about that time—about 12:15 I think—somewhere in there because he was coming back at 12:30. I got up, I dressed, I put on the tape recorder and put my jacket on over it and I waited for him until around 2 o'clock in the morning and [17] he didn't show up. So after he didn't show by 2 o'clock—the arrangements were

that we would meet out there between one and two o'clock in the morning and when he didn't show up I figured something had gone wrong so I started to undress and go back to bed again. Then just a couple of minutes, maybe five minutes after two I heard the car outside and I looked outside and it was Charlie Lee so I blinked my ceiling lights to let him know I was still awake. I put my clothes back on and rushed downstairs.

Q. What did you do then after you went out and met him?

A. After I went out and met him we drove to this area where we were suppose to meet.

Q. What happened if anything?

A. We went out Memorial Drive and I think it is on the other side of the river—well it was on the same side of the river that I was living and then to Alternate 29 and then we turned south on Highway 29 and we had gone a short distance when I noticed this car and I could tell at the time it was a late model Chevrolet following us and it had one person in it with a service cap on, like police officers wear. This car followed us down to I think it's Withers Road and we turned off Withers Drive or Withers Road. I was just trying to think of the name of that street. We went from Withers to Chester and then turned left on to Kirkwood and we turned left about the distance of a block and this car followed us all of this route and blinked his lights twice which was a signal for us to stop. We pulled off the side [18] of the road and turned out the lights and I turned on the tape recorder and we walked back to this car, and had a conversation.

Q. You went back to the car—you were parked in front of the car and the car was parked behind you is that right?

A. Yes sir.

Q. And who was in that car?

A. Raymond Hall.

Q. What kind of car was it did you determine?

A. It was a Chevrolet. It didn't have any markings on it. It didn't say police. It appeared to be black and had a radio inside—two way radio.

Q. Did you determine the model of the car?
A. Chevrolet.
Q. The year?
A. About a 1961.
Q. What happened when you went back to the car?
A. I sat in the back seat behind the front passenger and Charlie Harris sat in the front seat directly in front of me.
Q. Will you tell the Court and jury please what occurred as well as you can remember and what was said while you were in the police car with Raymond Hall?
A. Well we were in the car for approximately twenty minutes. I would say from about 2:15 until about 2:40 in the morning and we talked about this arrest that we had had further and Charlie told Sgt. Hall he wanted him to help me and he told [19] him that he was pretty sure that he was pretty sure, he (Charlie) was going to have to go to the penitentiary for being caught but that I probably wouldn't have to go because I had never been arrested before. So we talked about the arrest and when we were suppose to go to the commissioner and so I finally gave Sgt. Hall $50.00 myself and he told me if we saw each other on Main Street that I shouldn't recognize him, just act like I didn't know him. He told me to call him when we were going to bring liquor into town but not to write his phone number down on anything because if I was arrested they would search me and check these phone numbers. Also if I should call his residence—he said he was listed in the book on Northmont, the place where we had gone earlier that night and he said that if his wife answered the phone and he came to the phone and talked in circles for me to call him back later because he wasn't able to talk at that time. We discussed ways we would bring liquor into town, the general areas we would go to and the whole conversation was relating to our liquor activities. He also told us to watch Sgt. Duncan. I think he said that we had to watch him like a hawk. He said our main worries would be Sgt. Duncan and the federal officers. He said that he wouldn't do anything himself to hurt us, that is by placing the price too high, he wouldn't

try to take advantage of us that way and whatever we thought it was worth would be all right with him. He thought his services would definitely be worth something. [20] Q. What was said if anything with regard to you bringing whiskey into Danville—was anything said about you bringing liquor into Danville?

A. He asked us when we were going to bring in our next load and if I recall correctly I think we told him the next night. He said that he was going to be off for about four days. He was going to Richmond but that he would be back around 7 o'clock.

Q. What happened after this conversation with Hall?

A. After the conversation ended we got back in our car—another thing he asked in the car—he wanted to know where this arrest took place and we told him that it was nearby and we drove up there—he drove us there in the police car and we pointed out the house to him and he went in the driveway—I don't know the directions but it was on the right side of the house as you face the house and down a little distance there was a path and he drove in that by this large pile of logs and he backed out and came down the same road again in front of Charlie Lee's house onto Kirkwood Drive and took us back to the car. That's where we finished the conversation. Then we got back in our car and we drove around about fifteen minutes. We went over into the North Carolina side and then back over to Virginia. I think we used a pay telephone which is across the street from the Verdan Motel on the highway going to North Carolina and I called Quinn and he said he would be right out to meet us. We drove over into the North Carolina side and Quinn and Sgt. Duncan [21] met us early that morning and I gave him the tape recorder and the tape.

* * * * * * *

State Court Testimony.

Richard Artison, Direct:

[R. 42] Q. Was this Charlie Harris—was it Charlie Lee Harris?

A. Yes.

Q. Who is Charlie Lee Harris?

A. Charlie Lee Harris is the man who was with me.

Q. Is he a native of Danville?

A. As far as I know; he's been around Danville and North Carolina.

Q. Was it you who was seeking Mr. Hall or was it Charlie Lee Harris?

A. Well, we both were seeking him to talk with him.

Q. To talk with him?

A. Yes.

Q. Now, go back—he came out of his house?

A. He came out of the garage, walked down the driveway and was standing on the driver's side of this old model Chevrolet, and Charlie went back and talked with him and I stayed in the car and while I was in the car, I didn't know if this man was going to come and get in the car with me so I pressed the button and started the recorder that I have in my jacket. They talked at the car two or three minutes, and the man in the police uniform did not come to the car and Charlie came to the car. The man got in the car and drove away. So I had a conversation with Charlie [6] and he said——

Mr. Warren: Objection.

The Court: Was Mr. Hall present?

Mr. Warren: He got in the car and drove away.

The Court: Don't tell it if the defendant was not present.

A. Shall I go to the time of the meeting?

Q. Yes.

A. The next time I met—well, I met Sergeant Hall later that night or early the following morning, it was still dark, approximately between ten after two and fifteen after two, that's A. M., in the morning.

Q. Where did you go after you left——

A. After I left there? I directed Charlie to drive a couple of blocks away and get under a street light so that I could examine the recorder that I had to press the right button to cut it off and not use up the tape.

Q. Were you able to pick up anything on your recorder of the conversation on Northmont Boulevard?

A. No, the only conversation on that is between Charlie and myself. So I drove to a pay telephone and called Special Investigator Quinn Pearl and then I had a conversation with Pearl and I told him that I was supposed to meet [7] Raymond Hall later that night, and I told him I was supposed to meet him at one o'clock in the morning—in the morning—I was supposed to meet him by this plant. I think it's more or less a veneer plant on Old Mayfield Road, and I was going to talk with him that night. So Pearl instructed me to call him no matter what time it was, he said "you call me", so after that conversation I went back to the residence where I was staying.

Q. Where were you staying?

A. 302 Ross Street.

Q. Go ahead.

A. And I went back to the residence and rested awhile and set my alarm clock for 12:30 and Charlie took the car home and he was supposed to come back and get me at 12:30.

Q. Whose car was this, Charlie's car?

A. Government car 5463. He was driving it. It was assigned to me. I didn't go to sleep. I stayed in bed and rested and got out of bed about 12:30 and dressed and put the recorder back on and I waited till about two o'clock in the morning and Charlie hadn't shown up. I started to undress and go back to bed. As soon as I started to undress, I heard the car outside and I recognized the car and blinked the ceiling light in my room and completed dressing and went downstairs and met him, and he said he had overslept [8] and that was the reason he was late. He was still driving the car when we left my residence on Ross Street and drove out the street opposite highway 58, runs parallel with the river going back towards alternate 29 into Highway 29; and shortly after we turned right on highway 29,

I noticed a car following behind and I couldn't tell at first what kind of car it was because of the headlights but I could determine from the grille, I thought at that time it was a Chevrolet. This same car followed us going out highway 29 and I could see the outline of a man in the car wearing a service cap the kind police officers usually wear. We continued out 29 to Withers Road, turned right on Withers Road and to Kirkwood Drive towards the veneering plant, and right after we made a turn to go on this road the car blinked the lights twice and I figured it was a signal to pull over so I started the recorder going at that time. We pulled the car over on the right and stopped, got out of the car, walked back to the Black 1961 Chevrolet and I sat on the back seat on the right side behind the passenger seat and Charlie sat in the front seat with Sargeant Hall and we had a conversation. The three of us talked about an arrest that occurred on the 16th, at that time it was two nights previous.

Q. Were you using the name Richard Artisan at that time?

A. No.

[9] Q. What name were you using?

A. Billy Anderson.

Q. All right.

A. We talked about this arrest that happened about 11:30 on the night of the 16th in which I was caught with two cases of liquor on a 1955 green Chevrolet.

Q. Who were you caught with?

A. With Charlie Lee Harris.

Q. Who caught you?

A. Sergeant Duncan and two Alcohol Tax Investigators.

Q. Why were you caught? Did they know what you were doing?

A. They knew what I was doing, but I had been working down here as I said since the 26th. I came here on the 25th. I had been working here since that time in an undercover capacity and near the end it was becoming more difficult to purchase liquor. I talked with Investigator Pearl—

Q. The 25th of what month did you come to Danville, January or February?

A. February.

Q. All right.

A. I talked with Investigator Pearl about the possibility of getting arrested in order to further my undercover activities and that is what resulted in my arrest on the 16th. [10] Q. Now, go back to where you were in the car talking about your arrest.

A. We were sitting in the car and this car was equipped with two-way radio and it was on, but during the time I was in the car there were only two transmissions that were made. I couldn't understand the contents because the receiver was turned low.

Q. You mean from the car radio?

A. The car radio.

Q. I believe you testified you had gotten out of your car in the police car.

A. Yes, and I was in the back seat on the right side. I was in the car from 2:15 that morning until 2:40.

Q. Did you go anywhere in the automobile?

A. Yes, we drove—there was conversation about this arrest that I had on the 16th, when I was arrested, and Sergeant Hall asked me to show him where this happened and he wanted to know the name of the man we were delivering the liquor to at the time we were arrested and I was supposed to deliver two cases of liquor to a colored male named Jimmy Mitchell off of Palm Street, and I was suposed to bring the liquor there at the time I was arrested. So we drove up to where the road dead ends and turned right on Palm Street and I showed him the spot where I had been arrested, and the evidence was destroyed right there. We [11] continued in front of the Mitchell residence approximately a block and turned left into a small path or drive and came back to Palm Street and back over to Kirkland Drive.

Q. Were there any markers there where you turned around?

A. There was a pile of logs on the right. I think they are used by the plant. We went back to where our car was parked and continued talking about this arrest and Sergeant Hall advised me I would have to watch out for Sergeant Duncan.

Q. I assume now your purpose—what was your purpose in contacting Sergeant Hall at all?

A. The first time I came to Danville I didn't come to work. I came in for one afternoon to have a conference with Special Investigator Pearl.

Q. When was that?

A. It would have been in the middle of February about a week before I came down and established residence and started working here. Pearl filled me in on the different situations, liquor situation and personalities involved in it, and Sergeant Hall's name was mentioned as one who was suspected of accepting bribes, and after I was arrested on the 16th I decided to go over and talk with him.

Q. What was he supposed to do—go ahead.

[12] A. He told me I would have to watch out for Sergeant Duncan. He was wondering where Duncan got his information from and I would have to watch out for Federal Officers and he was in a position to do some fabors for me, but he couldn't guarantee me anything, but he was in a position to help and would not do anything to stand in the way. And I told him I was going to get a load the next night and bring it in and the load wouldn't have been too large because I didn't have much money left after paying my bondsman. He told me how to call his home. He told me to call from a pay phone because the lines couldn't be tapped. He said not to write his number down and if I used the telephone book not to underline his name and if I saw him on the street I was to ignore him and he would ignore me, we wouldn't say anything to each other. And he kept talking about a service he could render and that it was worth something.

Q. What did you ask him to do?

A. We were telling him about this arrest and everything and the fact that we were going to continue to bring liquor into Danville.

Q. Did you have something that Mr. Hall could do to help?

A. Yes, as I recall he could tell us—he said I should check with him before I bring liquor in and he could tell us the best times and all. He wondered how we happened

[13] to come in around 11:30 at night the night I got arrested and I said that was around shift change time. There was a lot of liquor brought in around shift change time. And that was how he was to help us, to tell us when the coast was clear. I was to call him at his home before bringing it in.

Q. Did you all outline any route you were supposed to use?

A. No, the only thing was mentioned, he asked what route we used the night we came in and were arrested and I told him the route and where we were chased by the police cruiser and where I got out of the car and ran, but he did not mention anything about a route I was to take in the future. I was to call him first. Let's see—also—as I said —he was mentioning these services. He said he wasn't going to set any particular fee on the services, that he didn't want to take advantage of it, but these services were certainly worth something and that he would let us set his own fee and I asked if fifty dollars was enough, so I went in my pocket and gave him five ten dollar bills and he accepted the money and we talked a little while, and we got back in our car and I didn't want to use a phone in that vicinity so I drove just across the North Carolina border and didn't see a pay phone so we came back on this side of the Virginia border and used the phone just across the street from Virdan Motel and I called Special Investigator Pearl.

[14] Q. Was he at home at that time?

A. Yes, he was, and he met me and Sergeant Duncan was there and he met me and I turned over the tape to him.

Q. Was anyone else with Mr. Pearl except Sergeant Duncan?

Mr. Warren: What was the question?

Q. Was anyone else with Mr. Pearl except Sergeant Duncan?

A. No.

Q. Did you mark the money? Was anything unusual about the money?

A. The money wasn't marked, but the serial numbers

were recorded and Special Investigator Pearl was given a list of the numbers.

Mr. Kushner: What was that question?

Mr. Link: I asked him if there was anything unusual about the money—if it was marked, and he said the serial numbers were recorded.

Mr. Kushner: On the five ten dollar bills?

A. Yes.

Q. Who furnished the money?

A. I got the money from Pearl.

[15] Q. Was this the first time you had seen Sergeant Hall?

A. Yes, it was.

Q. First time you had seen him?

A. Yes.

Q. You had been here since February 25th?

A. I started working on the morning of the 26th. I came to town on the 25th and got my room arrangements that day.

Q. Now, Sergeant Hall—was he arrested that night or that morning—do you know when he was arrested?

A. That was later, I think it was the 22nd. The same night that our department had other arrests here in Danville.

Q. Were you brought down and confronted with Mr. Hall?

A. Yes, sir. I came down that night.

Q. Did you identify him as the man?

A. Yes, I did. He was in Chief McCain's office at that time.

Q. What did Mr. Hall say?

A. He denied that he had ever seen me before.

Q. Said what?

A. Sergeant Hall denied that he had ever seen me before or participated in this bribery.

[16] Q. Where is this Charlie Lee Harris? Do you know where he is?

A. No, I do not.

Q. You don't know where he is?

A. No. I left town; he was still here.

Q. When did you leave town?

A. I think I left town on—I think the evening of the 19th or the 20th and then I came back and participated in the arrests and raids.

Q. At this time did you have your recording on—out on Kirkwood or whatever drive it was ?

A. Yes, I had it on.

Q. And did you have a conversation—was the conversation recorded between the two of you or the three of you?

A. Yes, it was.

Q. Was that—were you present when the recording was played and Officer Hall was down at Headquarters?

A. No, I wasn't present when it was played before him.

Q. That's all I care to ask.

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Federal Court Testimony.

Quinn Pearl, Direct:

[Tr. 175] Q. Mr. Pearl during 1962 and 1963 were you given an assignment in this area?

A. Yes sir.

Q. What was the nature of your assignment?

A. It was primarily to run an undercover investigation.

Q. With reference to untax paid whiskey is that right?

A. Yes sir.

Q. And when did you first come into this area?

A. I don't remember the day but it was in May of 1962 I am reasonably sure.

Q. And were you here from May 1962 until June 1963 I think you said you left here?

A. There were—to the best of my memory there were two brief periods that I was not here but I was here pretty solidly from May 1962 until June 1963.

Q. Was Richard Artison working under you here?

A. Yes sir, the latter part of that period. He came here along about the 20 or along in that neighborhood of the 20th [176] of February, I believe it was and he was gone for a few days and came back I think the 25th of February.

Q. Who was he assigned to work with?

A. He was assigned to me for supervision.

Q. Who did you assign him to work with?

A. He worked with Charlie Lee Harris.

Q. During the course of that investigation with particular reference to the month of March 17, 18, 19, 1963—did you have occasion to maintain a surveillance with certain city officers?

A. Yes I did.

Q. Would you relate to the Court and jury please just where this was and what you saw?

A. Very shortly after midnight I went to Maxine Drive or Maxine Road which is the street that runs along the log yard I think it's called of the veneering plant not very far from U. S. 29. It dead ends into a path and Palm Street or Palm Drive and I got out there with Chief McCain and Sgt. Duncan at approximately 1 a.m. We went in a car

which was assigned to me. We left that car maybe two-tenths of a mile from that log yard having driven past it and walked back along the railroad tracks and then walked back along that log yard and stopped behind a pile of logs and concealed ourselves in those logs and made observations. When we were walking along that railroad spur very near to Maxine Road we saw a car which was identical to [177] a car which had been sitting in a drive-in restaurant or a truck stop at a point almost opposite the end of Maxine out on Highway 29. This was a black Chevrolet which was a police car. A car came in from the direction of U. S. 29 and then went back out again from the direction it had come. That was approximately ten minutes after one. At 1:45 a police car which I was able to identify by the license number 1961 black Chevrolet driven by one man, there were no other occupants in the car, came past the log pile and backed in within 25 or 30 feet of where we were concealed, turned around and drove back in the direction of U. S. 29, stopped briefly and then in another place stopped for a long period of time, backed up a little and pulled up a little and then left. That same car returned from the opposite direction coming in by way of Palm Street and turned at the same place at 2:18 a.m. which was on the 18th day of March. Than at that time on the final trip there were two people besides the man in it, turned and went back the way it had come.

Q. Could you identify any of the people in the automobile?

A. Not of a certainty no sir, I couldn't, at that time because of the way the lights headed as far as I was concerned. I couldn't see the features however by size, shape I was reasonably certain that the two men in the back seat of the car were the two men that I knew Artison and Charlie Lee Harris.

Q. Could you determine whether the two men were colored [178] or white?

A. Yes sir they were colored.

Q. Had you previously supplied Artison with a miniphone?

A. I had.

Q. You showed him how to operate it?
A. Yes sir.
You may question.

Cross-examination.

By Mr. Davis:

Q. Mr. Pearl just what was your statement about the two men in the car about size and etc., where were they in the car?

A. There was one in the front seat of the car and one in the rear seat of the car. There was one on the right front and one sitting in the rear.

Q. But you didn't identify any of the three?

A. I beg your pardon.

Q. You didn't identify any of the three?

A. Not with certainty no sir.

Q. Now you were just asked if you gave Mr. Artison this machine—what time of night did you give it to him?

A. The miniphone I gave to him on Sunday afternoon, Sunday was the 17th if I don't have my dates confused and I gave him the little wire recorder on Sunday afternoon and showed [179] him how to operate it. It is very simple to operate.

Q. He was not familiar with it?

A. No sir.

Q. Now what I would like to know is who was with you when you received the machine back?

A. Sgt. Duncan.

Q. Sir?

A. Sgt. Duncan.

Q. Where was Officer McCain had he gone?

A. I couldn't say actually where he was. He was not with me. He had gotten out of my car at a point where his car was parked.

Q. About what time did you get this machine back Monday morning?

A. It was right after three o'clock. Maybe ten or fifteen minutes after three.

Q. What I would like to know Mr. Pearl where was that machine that night after it left the veneering plant?

A. Where was it—I can only testify sir as to where it was after it came into my possession. I got it from Artison.

Q. Do you know whether or not Artison or anyone else carried it to the radio station here in Danville?

A. I couldn't say of my own knowledge but it would seem wholely impossible from a time standpoint.

Q. You don't know?

[180] A. I know that I didn't.

Q. You don't know whether a recording of that was made that night at the radio station here in Danville?

A. A copy of that wire recording was not made anywhere that night.

Q. Was any recording ever made of that wire here at the radio station in Danville?

A. No sir. If any such recording was made from that wire it was not made until after I left here.

Q. That would be up in June?

A. Yes sir and I cannot account for it beyond that time.

Q. I understand that you left here in June?

A. Yes sir.

Q. But so far as you know that machine from the time you turned it over to Artison never was carried to a radio station here in Danville?

A. Not to my knowledge.

That's all.

. . . . . .

State Court Testimony.

Quinn Pearl, Direct:

[R. 100] Q. From the time you came here, up to March 18th of [64] this year, who did you work with other than Fred Duncan and Chief McCain?

A. I can't call their names. There were several of them I have met. I couldn't give their names.

Q. Really the only ones you worked with were Fred Duncan and Chief McCain, is that right?

A. Yes, sir. That's what I intended to tell you.

Q. Now, Mr. Pearl, on various occasions—how long have you known Richard Artisan?

A. Since early in January of this year.

Q. Did you know he was coming into town?

A. Yes.

Q. Did you send for him?

A. No.

Q. Did you send for a man and he was sent?

A. No, sir.

Q. Who sent him?

A. The Cincinnati Regional Office, as far as I know.

Q. How did the Cincinnati Regional Office know that a man was needed here?

A. I don't know, sir.

Q. Did you make any request?

A. No, sir.

Q. When did you say that you came here?

[65] A. The first time in Danville was May, 1962.

Q. And how long were you here on that occasion?

A. To the best of my recollection, three or four weeks.

Q. How long were you gone?

A. About two weeks, best I recall.

Q. Then you came back, and did you stay then?

A. Pretty much, yes.

Q. And whose idea was it to bribe Raymond Hall, yours and Chief McCain's?

A. That's a little difficult to answer. I don't know anything about the origin of any idea to bribe Raymond Hall.

Q. When did you first hear anything about it?

A. When I first came down here in May.

Q. Who did you hear it from?

A. An informer.

Q. Who is the informer?

A. The first person I heard mention it was Clarence Dixon.

Q. He's a bootlegger?

A. He has been a bootlegger; I don't think he is now.

Q. Whose idea was it to bribe Raymond Hall, yours or Chief McCain's, on March 18th?

A. As far as I know, neither mine nor Chief McCain's.

Q. Was it Fred Duncan's?

[66] A. I don't know.

Q. Whose was it?

A. I don't know.

Q. When did you first hear about setting him up for a bribe?

A. As far as I know I never was.

Q. You were never told anything about it?

A. It was discussed, but there was never anything——

Q. On the morning of March 18th——

Mr. Link: If Your Honor please, Mr. Warren is doing a fine job of cross examining his own witness.

The Court: You can't require him to disclose the source of his information.

Mr. Warren: I believe the Court will agree with me that he is an adverse witness.

Q. On the morning of March 18th, you joined Chief McCain somewhere and Fred Duncan somewhere, sometime, some place?

A. They joined me.

Q. Where?

A. I picked them up in the car.

Q. Why did you pick them up?

A. I was uneasy for fear Artisan was in a seriously dangerous position.

[67] Q. Danger from whom?

A. Mr. Hall.

Q. What was the danger he was going to suffer at the hands of Mr. Hall?

A. It's not a thing you can be positive about. He was going to meet Mr. Hall.

Q. For what purpose?

A. At a time and place he had set——

Q. For what purpose?

A. To discuss protection in the City of Danville.

Q. Was anything said about a bribe at that time?

A. Yes.

Q. I asked you if you had heard anything about it——

A. You asked me if I——

Q. Wait one moment please. I asked you if you had heard anything about Mr. Hall being set up for a bribe. If I misunderstood you, I am sorry. If you did hear anything, please let us know.

A. I can tell you what was said.

Q. That's all I asked.

A. All right. The intention was to meet with him at a time and place that he had set.

Q. Where did you get this information?

A. On Sunday night, I don't recall exactly what time it was, it was relatively late, and said Hall had set a time and place for meeting.

[68] Q. Did he tell you that there was to be a bribe attempt?

A. No. He asked me how far he could go money-wise and I said he would have to pay the man what he asked for up to a hundred dollars.

Q. You knew from talking to Artisan that he was to offer a bribe to Mr. Hall for protection for running whisky in the City of Danville?

A. No, he was not to make any offer.

Q. Well, what did you mean when you said up to a hundred dollars?

A. I had the purse strings.

Q. What were you going to give him the hundred dollars for?

A. To pay Mr. Hall anything he asked up to that point.

Q. Well, isn't that a bribe?

A. Beg pardon?

Q. Isn't that a bribe?

A. Yes, I guess so.

The Court: Mr. Warren, this is your witness. You are going a little too far.

Q. Did you know Raymond Hall before this?

A. I had never seen him until the morning of the [69] 22nd day of March to my knowledge.

Q. You had never seen Raymond Hall prior to the time he was arrested to be able to identify him?

A. That's right.

Mr. Warren: I think that's all.

Cross-examination.

By Mr. Link:

Q. Mr. Pearl, your name is Quinn Pearl?

A. Right.

Q. When did Richard Artisan—was—did he come at your request or was he sent in by the Cincinnati Office?

A. Yes, he was sent by the Cincinnati Office. I didn't request him.

Q. Was he working under you or working individually?

A. He was working under my supervision pretty much here and Martinsville too.

Q. You didn't reveal yourself to anybody in the Police Department with the exception of Mr. Duncan and the Chief?

A. That's right. Well, now, I don't want this to be misleading. I have been down here and met as many as ten in the recreation room of the Police Department, but they didn't know exactly what my work was.

Q. Did they know you were with the ATU?

[70] A. Yes, but I didn't discuss all the details of my work with Duncan or Chief McCain or anybody else.

Q. On the morning of the 18th I believe you said you picked up Officer Duncan?

A. Yes.

Q. Did you later pick up Chief McCain?

A. Yes.

Q. Where did you go?

A. I went out on what I think is the Old Mayfield Road and parked the car and went out on what I call a spur.

Mr. Warren: I would like to call the Court's attention to the fact that the witness is bringing in new material not brought in on direct, which I believe would give me the right to cross examine.

Q. Go ahead.

A. Old Mayfield Road is what I think it was. It's a veneering plant. There's a stack of logs out there along a street which I believe to be Maxine Road.

Q. What happened while you were there?

A. We walked up this spur railroad track and at ten minutes past one on Sunday—no, it would have been Monday, the 18th—and at 1:10 a black '61 Chevrolet came in from the direction of U.S. 29 and drove down this Maxine Road or at least along this log yard and turned down out of [71] my vision and came back driving very slowly and we went down to the extreme end away from U.S. 29 of that log yard and sat on some logs, concealed ourselves in the logs right at the end. At about 1:45 to the best of my recollection, this same car or a car identical to it came back and at that time backed into a road, a roadway, at the end of that log yard and at that time I read the license on that car, 195-179, the best I recall.

Q. 195-179?

A. Yes, I believe that's correct. I have notes on it. I don't have them with me. And that car then drove on back in the direction of U.S. 29 and stopped back where I couldn't more than tell that the automobile had stopped.

Q. Was anybody in the car?

A. Yes, one man, alone, driving.

Q. Did you know who he was?

A. No. I think I could have recognized him had I known the man, but I did not know the man and I could not recognize him and I could not now say that it was Mr. Hall.

Q. Was he in uniform?

A. I couldn't say that he was or not. He was dressed in dark clothing, and a big man—or in my terms of reference a big man. The same car came back from the opposite di-

rection, came up, I think it's Kirkwood Drive, and came up in front of the house on Palm Street and that time headed in [72] within thirty or forty feet of us. The headlights passed over me. I ducked. And at that time the car went back and headed out the way it had come. At that time there were three men in the car. At that time I was not in any position to get any clear impression of who they were. Obviously, one was white and two of them were colored.

Q. Could you tell?

A. Yes.

Q. Where were they seated in the car?

A. Colored subject on the right hand side of the front seat, and there was a third man—second colored man—in the back seat, in the rear. He seemed to be leaning forward.

Q. Was there any illumination there? A street light?

A. To the best of my recollection, the illumination came from the car light. There was a car with a white top over three hundred yards from us and I could see well enough to identify that car as a two-tone car.

Q. What did you do after this car went back down Kirkwood or Maxine?

A. Went back on foot to the car we came in and left. Then I went back to my apartment.

Q. Did you get any message then?

A. Yes. In response to a telephone call I drove [73] out into Carolina.

Q. From whom did the message come?

A. Fred Duncan. I dropped the Chief off and Fred rode with me and I went over into North Carolina and picked up the electronic device.

Q. Were you in charge of the electronic device?

A. Yes.

Q. When did Richard Artisan get that from you?

A. On Sunday shortly before noon.

Q. Was anything said at that time as to what he was supposed to do with it?

A. He was going to use it to record the conversation that night between the parties involved with regard to Mr. Hall.

Q. Had he made an appointment to meet with Mr. Hall?

A. I didn't know what the arrangements were. Those arrangements were made by Charlie Lee Harris.

Q. Who is an informer?

A. Yes.

Q. Do you know where Charlie Lee Harris is? We would like to have him down here.

A. I don't know.

Q. His subpoena came back. He couldn't be found. Do you know where he went to?

A. No, sir. I received a telephone call late in [74] the night on—whatever afternoon it was I came down to the police station and talked to you—and he was in fear of his life, and I took him and put him on a bus. I would rather not disclose where I took him. I think he is still in Danville.

Q. You have the tape recording?

A. Yes.

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Federal Court Testimony.

Eugene McCain, Direct:

[Tr. 42] Q. How long have you been with the Danville Police Department Mr. McCain?

A. Twenty four years this September.

Q. And how long have you been Chief of Police?

A. Four years this December.

Q. Chief McCain I wish you would tell us if you remember the events that occurred on the evening and night and morning hours of March 17th and 18th of 1963?

A. On March 18th which was Sunday Fred Duncan called me at my home sometime in the afternoon and said——

Mr. Davis: We object to what Fred Duncan said.

Q. As a result of the telephone call that you received from Fred Duncan—is he Sgt. Fred Duncan of the Danville Police Department?

A. That's right.

Q. As a result of that telephone call that you received from Sgt. Duncan what did you do if anything?

A. I went to bed. That night at midnight I received another telephone call from Mr. Duncan.

Q. As a result of that call what did you do?

A. I hurriedly got up and put on my clothes and got in my automobile—my personal car and drove through the city out on South Main Street outside of the City to Cooke Motor Company [43] and parked my automobile and got in the car with Fred Duncan and Mr. Quinn Pearl and proceeded out 86th Street to Shady Grove Road back into 29 and came back into the city and then turned down by the truck stop and went down the old Mayfield Road past the veneering plant, turned around and came back in the direction of the veneering plant, parked the car, we got out of the car, Quinn Pearl, Mr. Duncan and I and walked back up the railroad track towards the veneering plant. As we got about half way up the railroad track to the veneering plant we saw an automobile coming. So we laid down on the railroad track. This car came down, turned right at the veneering plant, across the railroad track on which

we were walking a couple a hundred feet perhaps away from us. The car proceeded up Maxine Road, where logs are stored at the veneering plant. The car turned around in the area and came back after maybe two or three minutes. It was a black Chevrolet similar to one used in the Police Department, and similar to one I had seen at the truck stop when we passed the truck stop coming in to the old Mayfield Road.

Q. Did you recognize any individuals in that car?

A. Not at that time.

Q. What time of morning was this?

A. That time was about ten minutes after one a.m. which was the 18th of March, Monday morning.

Q. Would you tell what you did after that?

A. After the car went back up the old Mayfield Road [44] towards West Main Street we got up off the ground and ran up the railroad track and turned left on Maxine Road and up to the pile of logs and got behind the logs. We stayed there a few minutes and Mr. Duncan and Mr. Pearl went down the road and in a few minutes they came back and we moved down to the far end of the logs from where we had entered. We went down to the last pile of the logs and climbed up on top of the logs. We remained there for some time. At approximately 1:45 another car came in there. We saw the headlights coming and the car came in along side the logs. It pulled up past the little dirt road that leads down along side the logs—it has no name to which I can identify it—it's just a place where vehicles go in and out of the log yard. The vehicle backed up with the driver on the side next to me. I was on top of the logs and the car backed up into this alley with the driver on my side. At that time I recognized the driver as Sgt. Raymond Hall of the Danville Police Department wearing his uniform. There was sufficient lights from the dash and the reflection of the headlights off the surrounding objects for me to clearly see him. I knew him and have known him for years. The automobile belonged to the Police Department of the City of Danville. It was a 1961 Chevrolet with Virginia license 195-179 which was a car belonging to the City of Danville.

Q. Chief I show you here a picture and I will ask you if you can identify it?

A. This is a picture of the log pile at the veneering [45] plant.

Q. Who made that picture?

A. Capt. Towler took that picture and I was present.

Q. You were present at the time?

A. Yes sir.

Mr. Musgrove: If you Honor please I would like to offer this into evidence as Exhibit No. 1.

The Court: In the absence of objection it will be so admitted.

Mr. Davis: No objection.

The picture of the log pile was marked and received in evidence as Government's Exhibit No. 1.

Q. Now Chief I will show you another picture and do not make any reference to the automobile or car in the driveway and I will ask if you can identify that picture?

A. Yes this is the road that the police car backed into.

Q. Where were you on the logs?

A. I was back approximately behind this log here—at the top of this log—the rear of that log.

Mr. Musgrove: I would like to offer this as Government's Exhibit No. 2.

The Court: It will be so admitted.

The picture was marked and received in evidence as Government's Exhibit No. 2.

[46] Q. Chief I will show you another photograph and ask you if you can identify that?

A. Yes this is the same pile of logs and the road that leads down along side the logs and this is Maxine Road.

Q. Is that the same intersection as you identified in Exhibit No. 2?

A. It is.

Mr. Musgrove: If your Honor please I move that this photograph be introduced as Government's Exhibit No. 3.

The Court: It will be so admitted.

Q. Chief while he is marking Exhibit No. 3 I will ask

you to come down and stand in front of the jury and take this photograph and tell them what it represents?

A. This is a pile of logs—this is Maxine Road—these logs are stacked up here, and they are parallel with Maxine Road. In the distance up here is the veneering plant and this is where I was concealed. Here is the little dirt road leading on beside the pile of logs here.

Q. That was Government's Exhibit No. 1 you were just referring to and this is number 2 and I will ask if you will state to the jury what that picture shows?

A. This is the same scene taken from another angle. This is the road the police car backed into and I was behind this pile of logs. This is where we were concealed and this is Maxine Road and this is the little dirt road along side.

[47] Q. Chief I will ask you if you will please to mark on the picture if you can the approximate location of where the automobile stopped? I think you can just put a line for the rear and a line for the front.

A. Chief McCain marked picture.

Q. Approximately what distance were you from the driver of the automobile at the time you saw him?

A. I was about thirty feet which is less than the distance across this courtroom.

Q. I'll show you Government's Exhibit No. 3 and ask you to state if you would what that represents?

A. This is the same view of the logs on a different angle taken from Maxine Road. Over here is the pile of logs behind which I was concealed. The veneering plant is back in the direction that I am standing.

Q. I believe Chief that you stated that that was the first occasion that the car came in there that it backed in there or was that the second?

A. On the second occasion that I had seen the black 1961 Chevrolet. That was the first occasion that I could identify the driver.

Q. Was that the second occasion that the black 1961 Chevrolet had been in the veneering plant?

A. I had seen it in there when we were coming up the railroad tracks—that was the second occasion.

[48] Q. And that was the occasion on which you identified the driver as being Sgt. Raymond Hall?

A. That's correct.

Q. Approximately how long have you known Sgt. Hall?

A. Twelve or fifteen years.

Q. All right after—for what length of time did the car remain there?

A. It backed into this dirt road slowly and pulled out slowly and pulled up in front of the pile of logs and stopped momentarily for perhaps a half minute or maybe less. Then it pulled down Maxine Road to the intersection of the old Mayfield Road and turned left on to Mayfield Road and then backed down into the intersection where he could see back up in the direction of the pile of logs. He stayed there perhaps three or four minutes in the intersection and then drove away in the direction of West Main Street and the truck stop.

Q. Did you have occasion to see the same vehicle later in the night or morning?

A. At 2:18 we were laying on top of the logs. I stayed up there and did not go any where—at approximately 2:18 the same morning we saw headlights approaching from another direction—that is the opposite direction from where the car had gone—the direction the headlights were approaching, were from down Palm Street which was off to our right. The lights came up Palm Street. We could see the car as it is shown against the trees [49] and buildings and turned left into Maxine Road and came up to the pile of logs and turned left into the little driveway which I had indicated by the pile of logs. It headed into the driveway and then backed out of the driveway into Maxine Road, then pulled off in a direction in which he had arrived, that direction being back down towards Palm Street, turned on Palm Street and went on down Palm Street out of my sight.

Q. How were you able to identify the vehicle in this case?

A. By the license number when the vehicle pulled into the driveway I could not see the license number because the headlights were shining on us and we were down behind the logs, but when he backed out in the road again to start

off the tail light illuminated the license so it was plain enough to be read at that time.

Q. And could you determine the number of occupants in the vehicle at that time?

A. Yes there were three. There appeared to be three people in the car, two in the front and one in the back.

Q. Could you identify any of those people—could you recognize any of the people in the vehicle?

A. I could not identity any of the people in the car—two of them appeared to be colored people and one appeared to be a white man but I could not identify any of them.

Q. Did you see the vehicle after that?

[50] A. Not at that time—I saw it the next day.

Q. I believe that as a result of information furnished you that a warrant was obtained for the arrest of Sgt. Hall is that correct?

A. That is correct.

Q. Who executed that warrant?

A. I was present but Capt. Towler and Detective Brown executed it. I swore out the warrants.

Q. Will you state what occurred on that occasion please and what was said if anything?

A. We had Mr. Hall come into the office and confronted him with what evidence we had and he denied the statements we made. He denied being up there. We confronted him with Mr. Artison and he said he didn't know him and had never seen him.

Q. Chief McCain was Mr. Artison present at the time?

A. He was.

Q. At the time Sgt. Hall was placed under arrest?

A. No he was not present when Hall was placed under arrest. He came in after Hall had been placed under arrest.

Q. Would you state to the Court and jury please what if anything was said by Artison in the way of identification?

Mr. Davis: We object to that, it's hearsay.

Mr. Musgrove: Mr. Davis, Mr. Warren went into it and asked Mr. Artison what was said and I think the Chief ought to be able to explain that he was present and that it was done in the [51] presence of Hall. Hall was sitting right there so it couldn't be hearsay.

The Court: I think I will admit it.
Mr. Davis: Exception.

A. Mr. Artison came into the room and identified himself and told Sgt. Hall who he was and where he had been with him on this particular night and he pointed him out and said that is Sgt. Raymond Hall, the man with whom I was with on the night of the 18th and he is the man that I gave the $50.00 to.

Mr. Davis: Now that's testimony that we object to, it's hearsay.

The Court: I think that is hearsay. It doesn't come from the man who said it himself. The jury will disregard just that last statement of the Chief's regard the man he gave the money to. It has got to be proved in some other way I think.

Q. Chief McCain did you or anyone else present point out Sgt. Hall and asked Artison, "Is he the man?" or any words to that effect?

A. No as I remember the occasion I was seated at the desk and Sgt. Hall was seated to my left and Artison came in and stood in front of me and I don't remember the introductory statement or words but he pointed out Hall without any information on my behalf or anyone present. He said, "That is the man."

Mr. Davis: We object to that.

Mr. Musgrove: If your Honor please it all goes to the [52] identification on the question which they raised not us. They raised it in the cross examination of Artison.

Mr. Davis: Artison can testify to it he is here.

Mr. Musgrove: He did testify to it your Honor.

The Court: I think under the circumstances I will let that stand.

Q. Chief do you recall what days and the duty hours of Sgt. Hall for the week of March 17th?

A. He was working on Sunday night which was his duty night beginning at 12 midnight. He comes to work just before midnight on the 17th and works from 12 midnight

until 8 in the morning on the hours of the 18th. He worked that night and he was scheduled to be off the next four nights.

Q. That would have carried him through Friday night?

A. The 22nd. I believe. He was not off the last night. It was necessary to call him back to work because of illness of his supervisor and he was working on the 22nd when he should have normally been off.

Q. Was that the same night which he was placed under arrest?

A. It is the same night.

Q. Then he was off from Monday morning until Friday?

A. He worked Monday morning. He was off Tuesday, Wednesday, Thursday and should have been off Friday but was called back to work.

State Court testimony.

Eugene McCain, Direct

[R. 76] Q. You are Chief E. G. McCain of the Danville Police Department?

A. That's right.

Q. You swore to a warrant against Raymond S. Hall on the 18th of March for accepting a bribe in violation of Code section 18.1-279 of 1950 as amended. Let's go back—did you see Officer Hall on either the night of the 17th or early morning hours of the 18th when the warrant was sworn to?

A. I did.

Q. Where did you observe him?

[40] A. Do you want the incidents leading up to this or the particular moment I saw him?

Q. Do you know any incidents leading up to this?

Mr. Warren: You said the early morning hours on the day the warrant was issued.

Mr. Link: I said the 18th.

A. When I saw Sergeant Hall to know definitely that it was Sergeant Hall was approximately 1:45 A.M. on this morning in front of a pile of logs——

Q. Let's go back. Did you see the car prior to that time?

A. Yes. As I passed the Wayside Diner, I saw the black police car used by the police department parked outside. We went down Mayfield Road past the veneering plant, cross the railroad tracks, turned around and backed in the yard of a house—whose, I do not know—started back up the railroad track on foot. As we were about two or three hundred feet from Maxine Road, we saw the car coming and laid down alongside the railroad track so that we would not be visible. It was a black Chevrolet of the type the police department uses with a man driving wearing a uniform. The car went into the driveway of the veneering plant, turned around—I gathered that from the lights on the trees and the sky—came back out in two or three minutes and went [41] back out towards West Main Street. We then went up to the road to about where the logs were and concealed ourselves about the vicinity of this fire block and

remained there for the time. Sergeant Duncan walked out there and saw a car out there and came back in a short period of time. It was not a car that we knew or recognized. We moved out to the end of the pile of logs——

Q. You keep talking about we. Who is we?

A. Sergeant Duncan of the Danville Police Department and Quinn Pearl of the Alcohol and Tobacco Tax Unit of the Federal Government. We moved down to the second pile of logs and stationed there a short period of time, maybe five minutes, and Sergeant Duncan and Pearl left on foot and started in the vicinity of Maxine Road and Palm Street. I heard dogs barking in the vicinity. In a very short time, another car came up. It was a colored man. I did not recognize him. I waited in the vicinity of the pile of logs. Immediately thereafter Duncan and Pearl came up the road from the direction that the car had originated. We climbed back up on the pile of logs and waited. This was approximately 1:45 A.M. this particular morning. This car came on Maxine Road, past the pile of logs where we were concealed. The logs were stacked parallel to the road. This particular stack was a large pile of sycamore logs, some three feet in diameter. This car passed the front of this pile of logs [42] which was going north to my right, stopped and backed up into a little side road alongside of the logs. I was on top of the logs nearest this little side road which has no name as I know of, seated between two of the large logs. When the car came in, I ducked down behind the front log so that I would not be seen. As the car backed into the short dirt road, I raised up and looked at the car. Sergeant Hall was driving it, wearing a police uniform. The car was no further away than that wall from where I am seated, maybe a few feet either way. I could see his features by the reflection of the headlights on the trees and the illumination of the dash light. I know him well. I had seen him a thousand times. He was driving a black police car, license 195-179 belonging to the police department. He pulled out to the left, went back of the pile of logs, remained there for a short period of time, maybe two, three minutes, drove slowly up by the veneering plant across the railroad track and turned into the Old Mayfield Road where he stopped and backed up, I assume so that he

could look in the direction where we were. At this point, Sergeant Duncan climbed up on the logs and with field glasses was watching. What he could see with the glasses I do not know. He remained there five or six minutes and drove off in the direction of West Main Street. At approximately 2:18 a car approached——.

Q. What time was it when you first saw him?

[43] A. About 1:45.

Q. And this was 2:18?

A. At 2:18 a car came from the opposite direction. We could see the approach of the headlights before we could see the automobile. The car came up Maxine Road, the street that the logs front on, and turned into the little dirt road, head first this time, backed out and started off. I looked to see who was in the car. I saw a driver and two colored people. I did not know any of the three.

Q. How do you know they were colored?

A. They might have been Italian. Their features were dark. Their features did not show up as white people's features. And it had the same license number, 195-179, black Chevrolet, license 1962 issue, and went back down in the direction which it had come. We immediately left the vicinity and walked back to the railroad track and to the car and left the scene.

Q. Why did you leave at that particular time?

A. We figured there was no reason to stay any longer because the rendezvous had been consummated.

Q. I gather you knew about this rendezvous?

A. I did. I had information that Sergeant Hall was——

Q. What time did you get this information?

A. I had information about eight o'clock in the [44] to be alert for a late call. I went to bed and received a call between eleven and twelve close to twelve. I got up, dressed hurriedly, left my home in my private automobile, drove through the City of Danville by secondary streets, arrived at Broadnax and South Main where I met Officer Holley in a police car and waited at South Main for Officer Duncan to pick me up. He arrived about quarter of one.

Q. When did Sergeant Duncan know about this?

A. He had told me previously that he may give me a call that evening.

Q. Duncan or Pearl?

A. Duncan.

Q. What is this man's name, Pearl?

A. Quinn Pearl. Sergeant Duncan called my home around eight o'clock and said prepare to leave around midnight.

Q. Did you see any money exchange hands out there?

A. No, sir.

Q. Did you furnish any money?

A. I afterwards reimbursed the Alcohol Tax Unit of fifty dollars which was used to pay off as protection money.

Q. Had you ever seen Agent Richard Artisan before?

A. No, sir.

Q. Did you see him on this morning?

[45] A. No, sir.

Q. Where did you go after you left there?

A. I was carried to Cook Motor Company and drove my automobile home.

Q. Sergeant, I mean Chief, why didn't you all make the arrest then and there?

A. For a number of reasons. If the officer had been honest, I felt like he would have come down the next day and presented me with the money and told me someone had attempted to bribe him. I felt he was due an opportunity to present his case. I saw him the next day in the company of Captain Boswell and he did not.

Q. If he said someone offered him a bribe you would have arrested him on the spot, wouldn't you?

A. All you got to do is attempt to bribe an officer. You don't have to pass any money. But I could not tell in the automobile; there might not have been any money offered.

Q. Did you get in touch with Quinn Pearl afterwards?

A. Yes.

Q. And I assume you got in touch with Richard Artisan.

A. We did.

Q. Was this in the City of Danville?

A. Yes.

Q. It all took place in the City of Danville?

[46] A. In the City of Danville, yes.

Q. All right. What time was Sergeant Hall arrested?

A. He was arrested Friday morning at about 2:30 in the morning.

Q. That would have been on the 22nd?

A. Yes; that's right.

Q. I'm going to ask you—why was the delay made in making the arrest?

A. We wanted the arrest to coincide with the arrest of a number of bootleggers around the City of Danville. We had been working with the A.T.T. Unit.

Q. Who is we?

A. Sergeant Duncan. And they wanted the arrests to start on the morning of the 22nd and we agreed that we would perform our arrests at the same time.

Q. What was Sergeant Hall's duty?

A. Sergeant Hall's title is complaint officers, but he substitutes for lieutenant and sergeant. He has the same rate of pay as a sergeant. He answers complaints, he goes out on cars on beats, he has free movement in the city and outside the city as duties necessitate his leaving the city.

Q. What was his duty—he must have been on the midnight shift on the 18th.

A. He was. He was on a car riding—outside the Municipal Building at that time. He came in later in the morning, about four o'clock. Lieutenant Riddle came in. [47] Either one or the other is at headquarters at all times. If one is in the other is out.

Q. When you arrested him, did Sergeant Hall make any statements?

A. I told him that I had a warrant charging him with bribery and he said that was a serious offense, and I said yes, it was, and he said he didn't know anything about it. He did not accept any bribes, knew nothing about it.

Q. Where any other statements made?

A. Yes, at about 3:40 in the morning, somewhere in the vicinity, Richard Artisan came in my office with Quinn Pearl and Paul Carter of the Alcohol Tax Unit. In the office was T. E. Yeaman, W. L. Brown and Captain Juby Towler of the Danville Police Department.

Q. How long was this after you talked with him?

A. He had been there approximately an hour.

Q. Had anybody else talked with him other than yourself?

A. Captain Towler.

Q. Was anyone else present at that first meeting before Artisan was brought in?

A. Captain Towler, W. L. Brown, T. E. Yeaman.

Q. What transpired when you brought in Richard Artisan?

A. Richard Artisan came in and walked through the [48] and sat down on my right. Sergeant Hall was on my left as you enter the office. Captain Towler asked Artison if he knew the man, and he said "Yes, it's Raymond Hall". He said, "Where did you last see him?", and he said, "At the veneering plant". He said, "Why did you go up there to meet him?"; and he said, "I went up there to pay him some money". He was asked why he went to pay money, and he said, "To buy protection in order to bring whisky into the City of Danville". He was asked did he pay him, and he said he did. He was asked how much he paid him, and he said "Fifty dollars". Asked what denominations, and he said five ten dollar bills. Asked what he expected to obtain for the money and he said he expected to obtain protection in order to bring whisky into the City of Danville. During this entire exchange, Sergeant Hall did not deny any of it. He did not speak.

Q. Did you all ask——

A. The questioning was in his presence. After Captain Towler was finished, we remained in the positions we were in. No one spoke, no one moved, for five minutes. I asked Sergeant Hall if he knew this man Artisan, and he said, "No, I've never seen him before".

Q. Never seen him in his life, I believe.

A. Well, maybe I injected that word in.

Q. Did you find any money on him?

A. We did. We searched him and found about two hundred dollars. He said he borrowed the money.

[49] Q. Did he tell you where he borrowed it?

A. He did tell us, but I don't remember the words.

Q. Did he have any of the five ten-dollar bills?

A. No, he did not have. This was three days after he received the fifty dollars.

Q. How long was he down at police headquarters all together—let me ask you this: Was Sergeant Hall on duty this particular night?

A. Yes.

Q. Was he supposed to be on duty?

A. No, he was not scheduled to be on duty.

Mr. Warren: What time are you talking about?

Mr. Link: Morning of the 22nd.

A. He was on duty because Lieutenant Riddle was ill and he volunteered to work.

Q. Did Lieutenant Riddle know anything about the warrant being issued or his being arrested that morning?

A. No.

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Federal Court testimony.

Fred Duncan, Direct:

[Tr. 71] Q. You are Sgt. Fred H. Duncan, Jr. of the Danville Police Department is that correct?

A. Yes sir.

Q. How long have you been on the Danville Police Department Sgt.?

A. Since November of 1952.

[72] Q. Sergeant directing your attention back to March 1963 particularly the late evening hours of March 17th and the early morning hours of March 18th of 1963 do you recall the events occurring that night?

A. Yes sir.

Q. Would you state please to the Court and jury just what did occur?

A. That was on a Sunday night to the best of my recollection. Mr. Quinn came by my house and picked me up and we went out and picked up the Chief shortly before midnight on Route 86 and proceeded from Route 86 out to Shady Grove Road and came back on 29. We passed the Wayside Diner and as we passed we noticed a 1961 Black Chevrolet car facing the building on the left hand corner of the Wayside Diner. We proceeded down to the old Mayfield Road and went on out of the city on old Mayfield Road and turned around and came back and parked just before you got back to the city limits. We left our car and walked from the car up the track there toward Maxine Road. We walked along the railroad and we saw a 1961 Black Chevrolet come down Maxine Road in the direction of the old Mayfield Road from the direction of Route 29. It went down and turned around in a few minutes and came back. It was a black 1961 Chevrolet with one subject in it. It went on back in the direction of Route 29 and we proceeded on down to Maxine Road and turned down Maxine Road and got into a pile of pulp wood beside [73] the veneering plant. We had been there for some little time about a half an hour maybe and at approximately 1:45 we saw a 1961 Chevrolet come back into Maxine Road in the direction of 29. It pulled on down past where we were concealed in the pile of logs and backed into a little dirt

drive there, I imagine it was used for a loading ramp. It backed in there and pulled out back into Maxine Road and headed back to West Main Street.

Q. Sgt. I will ask if you will take this photograph Government's Exhibit No. 1 and state whether or not you recognize what that picture is?

A. Yes sir.

Q. What is that?

A. The veneering plant is back over here and this is the storage yard where they store the wood along Maxine Road.

Q. Were you anywhere in that vicinity on the occasion you are testifying to?

A. Yes.

Q. Where were you?

A. To the best of my recollection I was right between them two logs there.

Q. Will you take this down before the jury please and show the jury where you were?

A. We were right in between these logs here.

Q. I show you Government's Exhibit No. 3 and ask you if you can identify that?

[74] Yes sir.

Q. Will you state to the jury please what that is?

A. This is Maxine Road and this is the alley.

Q. Turn this way and speak up please?

A. This is Maxine Road—West Main Street on Route 29 in this direction. This is the same log pile here that the other picture showed. This is the drive right here that we saw Mr. Hall turn around in.

Q. Could you show on that picture where you were?

A. Right behind this log.

Q. I will ask if you will mark on Government's Exhibit No. 1 that you just testified to a moment ago and put a mark where you were?

A. I think I was laying right between these two logs here.

Q. Will you state how long the automobile you saw stayed?

A. It came down the road and past this service road this way and backed into this service road and turned, and came

on back up here. It came on up here for about 100 or 150 feet and stopped and went on back to the intersection of the old Mayfield Road and Maxine Road and stopped there for probably five minutes or maybe a few minutes longer.

Q. How long have you known Sgt. Hall?

A. Since November 1952.

[75] Q. You have known him the entire time you have been with the Police Department is that correct?

A. Yes sir.

Q. Now what occurred after this event when you saw him back in the road and pull out?

A. As I said this car backed in and pulled back out into Maxine Road and we could identify the driver. We identified him as being Mr. Hall. He went on up and stopped between where we were concealed in the logs and the railroad track and he sat there for a few minutes and then went on out across the railroad and into Mayfield Road and sat there probably for five minutes and then he left again, going in the direction of Route 29. After he went out of our sight Mr. Quinn Pearl and myself from where we were with the Chief, we left and walked down to Charlie Lee's house and as we were approaching the house some dogs treed us and we got in some bushes.

Q. I didn't understand you?

A. I said while we were in the bushes Charlie Lee came out and left his house and went up back of Maxine Road to West Main Street and then we walked on back up to where we left the Chief and Charlie Lee had stopped between where we were hiding and the railroad and he stopped there and opened the car door and sat there for just a short while and left. We didn't see him or the car again.

Q. Did—what did you all do after that?

[76] A. We stayed on until shortly after two until about two eighteen and we were still behind the logs when a car came from the opposite direction coming up past Charlie Lee's house on Farm Street. It was the same 1961 Chevrolet—the police car pulled into the logs with the headlights shining right on us. It backed back out into Maxine Road and proceeded on in the same direction it came. This time

it had two colored subjects in it plus the driver who we couldn't identify because there wasn't any light out there.

Q. You could not identify any of the three individuals?

A. The only ones you could identify was two colored subjects, one in the front and one in the back.

Q. How did you identify it as being the same automobile as you had seen Sgt. Raymond Hall driving previously?

A. By the license number.

Q. You had gotten the license number?

A. Yes.

Q. At the time he backed into the place?

A. Yes sir.

Q. What occurred after that time?

A. After the car went on out of our sight, it went on back down Maxine Road and stopped at the bottom. We could tell the lights stopped moving and went out. When they cut the lights out we left and went on back and got in our car. We dropped the Chief off back where he had left his car and he picked up his [77] car and went on home I guess and Mr. Pearl and myself went on to his apartment on Lawrence Blvd.

Q. Did you go with Quinn Pearl anywhere after that?

A. Yes sir he received a call a little after three o'clock and I rode with him back out to the end of Carolina—on 29 to the cut off where we fell in behind the Ford driven by Charlie Lee and Artison and they pulled over and stopped there and Mr. Pearl received a recorder from Artison. We headed on back towards town coming back by Highland Road.

Q. How was Artison dressed on this occasion?

A. As well as I can remember he had a fatigue cap on, a sports shirt, a pair of either khaki——

Mr. Warren: Speak a little louder Mr. Duncan.

A. I said he had on a fatigue cap, a sports shirt I don't remember the color but I believe it was red checked, I am not sure and a pair of either khaki pants or overall pants.

Q. Do you recall whether or not he had any type of jacket or coat?

A. He may have it was cool that night. I don't remember.

Q. What was the weather condition that night?

A. It was clear and cool. I remember having to put a coat on and it was a full moon.

You may question.

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State Court testimony.

Fred Duncan, Direct:

[R. 120] Q. I see. When did you first meet the Undercover Agent Artisan?

A. First time I saw him was when he and Charlie Lee were arrested.

Q. That was your first contact with him?

A. Yes.

Q. When were he and Charlie Lee arrested?

A. I believe on Friday night before Sergeant Hall was approached, which would have made it about two nights before the 18th. I'm not sure of the date.

Q. Somewhere around the 16th?

A. Probably so.

Q. Now, who made the arrangements with Charlie Lee Harris?

A. Who?

Q. Yes, to lend his assistance to the ATU.

A. I don't know.

[84] Q. Did you have any contact with Charlie Lee Harris other than his arrest?

A. I had been with some of the officers when they talked with him.

Q. Was this prior to his arrest with Artisan on the 16th?

A. I had been with him on other occasions prior to that.

Q. That was with the ATU Agents?

A. Yes.

Q. Who?

A. Not an agent. Probation officer, Mr. Fansler. We were talking about a raid on Charlie Lee's residence on Palm Street.

Q. Was this during the investigation?

A. It was all during the investigation.

Q. Was the raid on Charlie Lee's place during the investigation?

A. Yes.

Q. And approximately when was this raid on his place?

A. It was before Christmas, or maybe during Christmas, probably in December—I'm not sure.

Q. Was this a part of the undercover plan?

A. No.

[85] Q. This was a legitimate raid?

A. Yes.

Q. Were any arrests made?

A. No.

Q. Was any whisky found?

A. No, no illegal; some dispensary and a good quantity of home brew.

Q. Was Charlie Lee acting as an informer on this particular occasion?

A. As far as I know he was not.

Q. Was this when the arrangements were made for him to cooperate with the ATU?

A. No, as far as I know.

Q. What was the occasion of this investigation?

A. I had heard they were raiding him and Charlie Lee was on probation and that was the reason we went out. I went to show him where he lived. I went out with him.

Q. Were you in on the conversation?

A. I was in the car.

Q. So the three of you were sitting in the automobile talking?

A. Yes.

Q. What was the gist of the conversation between Mr. Fansler and Charlie Lee?

A. He was just talking to him about he had heard we [86] raided him and I think, the conditions of his probation. I am not familiar with that, but he said the conditions were he was not to be around any place where anyone sold whisky or kept any alcoholic beverages and since our raid revealed that he was staying at this house where they evidently sold whisky, that was the purpose of our conversation.

Q. When was it thereafter that you learned that Charlie Lee was cooperating with and acting as an informed of the ATU?

A. Probably several weeks; two or three weeks.

Q. I take it you learned this through your contact with the ATU?

A. Yes.

Q. I believe at the time Charlie Lee Harris and Artisan were picked up this was a phony arrest?

A. Yes.

Q. Was this for the purpose of removing suspicion from them?

A. Yes.

Q. What contacts did you have with Artisan or Anderson after his arrest on the 16th.

A. I saw him on the 16th, on the next morning at the hearing, and I didn't see him any more until—until the night that—after he talked with Sergeant Hall.

Q. Now, on Sunday, the 17th or the 18th—was it the 17th—18th?

[87] A. 17th.

Q. On the 17th, when did you first get information that a bribe was going to be offered to Sergeant Hall?

A. When did I get information that a bribe was going to be offered?

Q. Yes.

A. I called Quinn sometime probably 8:00 or 8:30 that night and he told me Artisan was going to try to meet Hall sometime that night. There was no mention of a bribe.

Q. What was he going to meet him for?

A. I don't know. He and Charlie Lee were to meet him. That's all I know.

Q. When did you inform Chief McCain?

A. Shortly after that.

Q. Sometime after eight o'clock P.M. on Sunday, the 17th?

A. That eight is a rough guess, eight, nine, early part of the night. I called him, called the Chief and told him if I heard any more I would call him back.

Q. Is that all you told the Chief?

A. Is that all I told him?

Q. Yes.

A. I told him Artisan and Charlie Lee were going to contact Sergeant Hall the first time, and the second time——

Q. What was the purpose that Artisan and Harris [88] were going to contact Sergeant Hall for?

A. I imagine to arrange for protection.

Q. Or in short, to bribe him to provide them with protection in bringing illegal whisky in the City of Danville?

A. If you want to put it that way. There was no mention of money at the time.

Q. That certainly was the understanding, was it not?

A. Yes.

Q. There was no question in your mind that a bribe was going to be offered, if it got that far?

A. If it got that far, yes.

Q. When did you again find yourself in contact with Mr. Pearl?

A. I called him that night before I got off work.

Q. What time was that?

A. Probably between 11:00 and 11:30.

Q. Were you working second shift?

A. Yes.

Q. On patrol car?

A. No, sir.

Q. On the desk?

A. Either on the desk or acting sergeant.

Q. You called him. What did he tell you then?

A. He told me that they had contacted Sergeant Hall and arranged for a meeting between one and two.

Q. What happened then?

[89] A. I called the Chief and arranged to meet him.

Q. What time did you call the Chief?

A. Just as soon as I called Mr. Pearl.

Q. What time was this?

A. I don't remember the time. Somewhere around 11:30, something to twelve.

Q. Where did you meet the Chief?

A. Cook Motor Company on Route 86.

Q. What time was that?

A. We were to meet him around one o'clock.

Q. Was it around one when you met him?

A. Shortly before.

Q. Where did you go then?

A. Pearl picked me up.

Q. Where did Pearl pick you up?

A. At home.

Q. You were off duty then?

A. Yes.

Q. And you had gotten home?

A. Yes.

Q. Carried you to Cook Motor Company and picked up the Chief?

A. Yes.

Q. Where did you proceed then?

A. Went out 86, Route 86, to Shady Grove Road, to Old Route 29 and then back into the City on Old 29.

[90] Q. About how far is that?

A. Oh, probably six or seven miles.

Q. And about what time was it you arrived at the southern city limits of the City of Danville?

A. Few minutes after one o'clock.

Q. I thought you said you picked up the Chief at about one o'clock.

A. I said a few minutes before one. We weren't wasting any time. We turned in the Old Mayfield Road about five minutes after one.

Q. You say it's only six or seven miles across the Shady Grove Road to the city limits?

A. I wouldn't say much further than that.

Q. About what time did you arrive at the veneering plant?

A. Probably between 1:10 and 1:15.

Q. Then what did you do?

A. What did we do then?

Q. Yes.

A. We concealed ourselves among some logs in the storage yard on Maxine Road.

Q. What did you do with the car?

A. Parked it on the Old Mayfield Road and walked along there on the Old Mayfield Road.

Q. Where on the Old Mayfield Road?

[91] A. Just outside of the city limits on the right.

Q. About how far from the veneering plant?

A. Probably a quarter of a mile—maybe a little less.

Q. Walked back and concealed yourselves where?

A. In a pile of logs in a storage yard there.

Q. And what happened then?

A. I didn't hear you, Mr. Carter.

Q. At the time that you and Mr. Pearl—at the time Mr. Pearl came and picked you up and you got Chief McCain, what did Mr. Pearl tell you that you all were going to do?

A. What did he tell us we were going to do? The only thing—my understanding was to verify the fact that Mr. Hall was at this place at this time in case we saw Artisan and Charlie Lee.

Q. Would you repeat that?

A. Just to verify the fact that he was going to meet Artisan and Charlie Lee at the time that he said.

Q. Did he say anything to you about being afraid for Artisan's life or safety?

A. I think it was mentioned, yes.

Q. After you all concealed yourselves in the woodpile—how did you conceal yourselves in the woodpile?

A. We laid down between the logs?

Q. You and Chief McCain and Mr. Pearl?

[92] A. Yes.

Q. What happened then?

A. We sat there and waited.

Q. How long did you wait?

A. Well, the first time Mr. Hall came in after we were there was probably 1:45.

Q. About 1:45?

A. Yes, sir.

Q. How did you determine this particular hour?

A. I knew the police car—1961 Chevrolet.

Q. I said how did you determine the hour, 1:45?

A. I looked at my watch.

Q. You looked at your watch?

A. Yes.

Q. Was some mention made around the crowd as to what time it was?

A. I think we all checked the time about the same time.

Q. Did you have your watches synchronized?

A. No. Mine is usually pretty close. I don't know about the other two.

Q. So each one of you has independently determined the time?

A. I don't know what the other two testified to.

Q. So you say about 1:45 an automobile rolled in?

A. Yes.

[93] Q. From what direction?

A. West Main Street off of Old Mayfield Road.

Q. What did the automobile do?

A. Come on down driving very slow past us to a turn-off.

Q. Is this turn-off on the property of the veneer company or Old Mayfield Road?

A. It's off of Maxine Road. We were on Maxine Road is where we were. The turn-off is just past us, just off of Maxine Road and I guess it's a drive used by the veneering plant.

Q. What type vehicle was it?

A. 1961 Chevrolet.

Q. What was the license number, if you know?

A. 195-179, I believe.

Q. And this belonged to whom?

A. City of Danville Police Department.

Q. Did you recognize the driver?

A. Yes.

Q. How?

A. When he went past this road and backed in, and when he did he was on the outside of the car and we were closer to him and he was silhouetted from the headlights of his own car.

Q. You saw his silhouette?

A. I saw Mr. Hall in the car.

[94] Q. In other words, you recognized a silhouette rather than actual features?

A. I recognized the silhouette as Mr. Hall.

Q. How close were you to the car?

A. About thirty feet.

Q. Point out in the courtroom about how far.

A. I would say maybe as far as from here to the back door.

Q. What happened then?

A. He left. He backed in and went on up towards the Old Mayfield Road and stopped beyond us a ways and sat there a few seconds and pulled out in the intersection of Maxine Road and Old Mayfield Road and sat there maybe five minutes.

Q. Now, what happened after he stopped in the intersection of Maxine Road and Old Mayfield Road?

A. He sat there with his lights on in the car for probably five minutes, or maybe a few minutes more.

Q. How could you see him?

A. I had a pair of field glasses. I could see the car and the man in the car.

Q. A silhouette?

A. At that distance all you could do was recognize someone being in the car.

Q. Where did the car go then?

[95] A. Left there and went on up towards West Main Street.

Q. Where did you next see him?

A. Around 2:15, 2:20.

Q. Where?

A. He came from the opposite direction. I don't know the name of the street—the street that leads off Withers Road into Kirkwood, into Maxine—and turned right in front of us.

Q. About how far was he from you then?

A. About the same distance.

Q. Who was in the car then?

A. There were three people in the car.

Q. How far were you from the car?

A. About thirty feet.

Q. Did you recognize anyone in the car?

A. No. He turned with his headlights just over the pile of logs we were sitting on.

Q. What happened after that?

A. He backed out and went on down Maxine Road into Palm and stopped on Kirkwood.

Q. How long did he stay there?

A. I don't know. That's when we left.

Q. How far away was he from you then?

A. About a distance of two blocks.

[96] Q. Didn't it seem a little odd to you that if Pearl was in fear of Artisan's life that he should leave at that point?

A. If he was in fear, there wouldn't have been too much we could do at that distance.

Q. So you went on back to the car. Where did you go then?

A. When we went back to the car?

Q. Yes.

A. Went and took the Chief back out on 86 and went from there to Mr. Pearl's apartment on Arnett and stayed there until we heard from Artisan.

Q. What time did he call?

A. After three.

Q. Then what did you do?

A. Got back in the car and went back out on West Main Street and caught up with them out in North Carolina.

Q. When did you first advise the Chief that Artisan contended that he had given money to Hall?

A. The next day, I believe.

Q. You didn't tell him that night?

A. I don't think so. We figured he had gone home and got in bed, and by the time we heard he had had plenty time to have gone home and got in bed.

Q. Where did you meet Artisan then?

[97] A. Where did we overtake him?

Q. Yes.

A. We were to overtake them going out 86 south which we did about Pelham—excuse me—29, at the Pelham cut-off of 29.

Q. Mr. Duncan, why didn't you arrest Sergeant Hall immediately after Artisan reported that he had taken bills the serial numbers of which had been recorded?

A. I didn't have a thing to do with that. The Chief was the one to swear to the warrant which he did.

Q. Were you told not to make an arrest?

A. No, but I think it was the understanding of all of us not to until this undercover thing had been exposed.

Q. Didn't you want to get him with the marked bills on his person?

A. We would like to, I imagine, but it wasn't so important that we would blow up the other.

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(4753-0)

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1117

RAYMOND S. HALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals affirming the conviction is reported at 342 F. 2d 849 (Pet. App. 12-21). The opinion denying a petition for rehearing (Pet. App. 22-23) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered March 4, 1965. A petition for rehearing was denied

April 1, 1965. The petition for a writ of certiorari was filed April 30, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

At a trial for conspiring to impede a federal agent in the performance of his duties, the government, in order to show motive, introduced evidence that petitioner, a policeman, had taken a bribe, before the conspiracy was formed, from the agent, who was working in an undercover capacity. Petitioner had been acquitted in a State court of a charge of accepting this bribe. The questions presented are:

1. Whether the federal trial for impeding the federal officer after the State acquittal on the bribery charge constituted a denial of due process or a violation of the guaranty against double jeopardy.
2. Whether, on principles of collateral estoppel, the federal court should have declined to receive any evidence with respect to the bribe.

STATEMENT

Petitioner was convicted in the United States District Court for the Western District of Virginia of conspiring with one Dail Jackson to impede and injure a federal agent in the performance of his duties, and was sentenced to imprisonment for four years.

The direct evidence of the conspiracy came from co-conspirator Jackson. He testified that he had been selling bootleg whiskey to one Harris and that this

whiskey was being picked up by a man he knew as Anderson. On March 19, 1965, he told petitioner, a Danville policeman, that he had heard that Anderson was a federal agent and that Harris was working for the government. Jackson testified that he went to petitioner, whom he had known for a long time, for advice. Petitioner told Jackson to try to sell more whiskey to the two men and then notify petitioner, who would be there when they picked up the whiskey and would "take care" of the matter (Tr. 124-136). Jackson thereafter attempted to locate both Harris and the agent but was unsuccessful because both of them had left Danville.

In addition to this evidence, the government, to show petitioner's motive to impede the agent, introduced evidence, including a mechanical recording, to the effect that on March 18—the day before the above conversation—the government agent, in his undercover capacity, had paid petitioner a bribe of $50. Before the federal trial, petitioner had been acquitted in a State court on a charge of taking this bribe. (See Pet. App. pp. 27-32, 41-44, 52-59, 67-71).

The Court of appeals affirmed the conviction, holding, among other things that the "jury could reasonably infer from Hall's statement that he would 'take care of it' if Jackson could arrange for a sale of whiskey to [the agent] and Harris and advise him of the pickup place that Hall planned at least to interfere with the discharge by [the agent] of his official duties by arresting him and perhaps that he had in mind harming [the agent] physically" (Pet. 14-15).

Petitioner, through new counsel, filed a petition for rehearing in which he contended that his federal trial, after his State acquittal on the bribery charges, violated the Double Jeopardy and Due Process clauses, and that the evidence of the bribery should have been excluded on principles of collateral estoppel. The court of appeals rejected these contentions in denying the petition for rehearing. It is these issues which petitioner raises in the petition for a writ of certiorari.

ARGUMENT

1. No issue is presented here as to the sufficiency of the evidence. Moreover, the question which petitioner does seek to raise—whether this Court should reconsider its ruling in *Bartkus* v. *Illinois*, 359 U.S. 121, that successive State and federal prosecutions arising out of the same transaction do not violate double jeopardy or due process—is not actually presented by the record. The federal prosecution for conspiracy to impede a federal officer did not arise out of the same transaction and was not for the same offense as the State bribery charge. It is true that there was evidence of the bribery at the federal trial, but this was only to show petitioner's motive in forming the conspiracy to impede. The plan to "take care" of the federal officer did not even come into being until after the bribery had occurred; petitioner, at the time he accepted the bribe, did not know that the man with whom he was dealing was a federal officer. It was only when he later discovered that fact that he planned to take action against the federal officer. Thus, even if the bribery had been a

federal offense, an acquittal on such charge would not have barred the instant prosecution. *Sealfon* v. *United States*, 332 U.S. 575.

2. There is no basis in this case for the application of the doctrine of collateral estoppel to prevent the federal government from offering evidence of the bribe to show petitioner's motive. Whatever the scope of the constitutional guaranty against double jeopardy as affecting successive State and federal prosecutions, it cannot be said that the State and the federal government are the same party. The principle of collateral estoppel applies only when the parties in the prior proceeding were the same. *Drummond* v. *United States*, 324 U.S. 316, 317-318.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1965

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